



Winter 2023

## **Policing the Unhoused**

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### **Recommended Citation**

Ernesto Longa, *Policing the Unhoused*, 53 N.M. L. Rev. 101 (2023).  
Available at: <https://digitalrepository.unm.edu/nmlr/vol53/iss1/5>

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# POLICING THE UNHOUSED

Ernesto Longa\*

## INTRODUCTION

On May 25, 2020, 911 dispatchers sent Minneapolis Police officers to a convenience store.<sup>1</sup> The caller had reported that George Floyd, a 46-year-old Black man, had used a counterfeit \$20 bill to purchase a pack of cigarettes.<sup>2</sup> Officers took Floyd into custody and murdered him in the street.<sup>3</sup>

A month earlier, an Albuquerque police officer ordered Joleen Nez, a 37-year-old, unhoused, American Indian woman, “to pick up her litter [from the street] and of the consequences if she did not.”<sup>4</sup> Joleen refused, stating, “It’s not my trash.”<sup>5</sup> The consequences were that Joleen was summoned to appear in court for littering, booked into the Bernalillo County Metropolitan Detention Center (“MDC”) when she failed to appear and declared an in-custody death the next day.<sup>6</sup>

These stories and others like them<sup>7</sup> prompted a series of questions. Why are non-violent petty criminal offenders being murdered by police and dying in county jails? What does the day-to-day policing of petty crime look like? Who commits

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\* J.D., M.L.I.S.; Law Librarian, University of New Mexico. Thanks to Jessica Mills for her endless support and encouragement. Solidarity with the Prison Abolition Movement which works to build a “society that centers freedom and justice instead of profit and punishment.” Ruth Wilson Gilmore & James Kilgore, *The Case for Abolition*, MARSHALL PROJECT (June 19, 2019), <https://themarshallproject.org/2019/06/19/the-case-for-abolition> [<https://perma.cc/KXM5-9PNL>].

1. See Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Jan. 24, 2022), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [<https://perma.cc/7NTS-HFFM>]; see generally Tim Arango, *Derek Chauvin Was Convicted of George Floyd’s Murder. Could he Testify Against his Fellow Officers?*, N.Y. TIMES (Jan. 24, 2022), <https://www.nytimes.com/2022/01/24/us/derek-chauvin-george-floyd-testify.html> [<https://perma.cc/YQ4U-RWD3>].

2. Hill, *supra* note 1; see generally Arango, *supra* note 1.

3. See Hill, *supra* note 1; Arango, *supra* note 1.

4. Criminal Complaint, *State v. Nez*, T-4-CR-2020-2759 (N.M. 2<sup>nd</sup> Judicial Dist. Ct., Apr. 29, 2020) [hereinafter Criminal Complaint, *Nez 2759*]; Cecilia Nowell, *Joleen Nez: A Death in Custody*, THE NATION (Jan. 10, 2022), <https://www.thenation.com/article/society/joleen-nez-new-mexico-death/> [<https://perma.cc/W9G7-ZY2G>].

5. Criminal Complaint, *Nez 2759*, *supra* note 4; see Nowell, *supra* note 4.

6. Criminal Complaint, *Nez 2759*, *supra* note 4; Nowell, *supra* note 4.

7. See generally *Police Shootings Database, 2015–2021*, THE WASHINGTON POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/S2NA-4AP8>] (last updated Oct. 7, 2022); Elise Kaplan & Matthew Reisen, *Tragic and Horrible: Nine at MDC Have Died Over Past Year*, ALBUQUERQUE JOURNAL (Mar. 13, 2021), <https://www.abqjournal.com/2369430/tragic-and-horrible.html> [<https://perma.cc/EMN4-WV46>]; Julia Lurie, *Go to Jail. Die from Drug Withdrawal. Welcome to the Criminal Justice System*, MOTHER JONES (Feb. 5, 2017), <https://www.motherjones.com/politics/2017/02/opioid-withdrawal-jail-deaths/> [<https://perma.cc/3J8D-RA7A>]; David Fitzpatrick, *Officers Face Murder Charges in 2014 Albuquerque Man’s Shooting*, CNN, <https://www.cnn.com/2015/01/12/us/albuquerque-police-murder-charges> [<https://perma.cc/TW9P-GJWL>] (last updated Jan. 13, 2015, 4:03 PM).

petty crimes? What are the most common petty criminal offenses? Where are they committed? How often do suspects resist arrest or refuse to obey officers? How often do officers use force? What factors contribute to a suspect being summoned rather than booked? How do state courts manage and respond to the thousands of petty criminal complaints filed with them annually? How often do the courts issue warrants for the arrest of defendants who have failed to appear? How much in fines and fees do the courts impose? How often are defendants booked following the issuance of a summons or an arrest? How often are defendants sentenced for their crimes?

To answer those questions, data was collected from all misdemeanor-only criminal complaints filed by the Albuquerque Police Department (“APD”) in the Bernalillo County Metropolitan Court (“metro court”) in 2020. However, the shocking discovery that nearly one-third of these misdemeanor complaints filed in the metro court by APD were filed against unhoused individuals prompted a shift in the intended focus of this article from the policing of petty crimes, generally, to the policing of the unhoused, specifically. This shift in focus required additional data collection to ensure a more complete picture of the policing of the 867 unhoused misdemeanants uncovered through the preliminary survey. Consequently, data from all misdemeanor and felony complaints filed against them were added to the dataset. In total, 1,924 criminal complaints were inspected—1,554 misdemeanor complaints and 370 felony complaints.<sup>8</sup>

Nonetheless, this remains an incomplete picture of the deluge of policing activity that washed over the unhoused in Bernalillo County in 2020. First, given the absence of a “housing status” field in the complaint, citation, and booking forms and the dearth of “essential facts” often provided by the filing officer, it is likely that a number of unhoused individuals went undetected. For this article, an arrestee was only qualified as unhoused if they were described as “homeless” or “transient” in the criminal complaint or booking sheet; the address provided for them was the address of a homeless shelter or a hotel; they were accused of committing a crime a housed person would not likely commit, such as camping in city parks or squatting in boarded-up homes; their case was disposed of in Outreach Court;<sup>9</sup> or they were arrested for committing crimes such as drinking in public or sitting under no trespass signs on commercial properties with other persons identified as homeless. In addition, unhoused individuals arrested solely by law enforcement agencies other than APD or who only had felony complaints filed against them are not included in this dataset.

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8. Dataset available upon request from the author.

9. Outreach Court, formerly known as homeless court, has been a specialty court in the Bernalillo County metropolitan court for over twenty years. Unhoused and housing insecure defendants typically obtain referrals to the court through social service programs that they are participating in, mostly housing and treatment-based programs. Defendants who have been convicted of violent felonies in the past seven years may not have their cases transferred to Outreach Court. When a case is transferred into the Outreach Court, outstanding bench warrants are typically cancelled. After a period of less than 60 days following acceptance in the court, the court conducts a meaningful review hearing, at which time the defendant’s advocate (case-manager from the referring program) provides a report on the defendant’s participation in their program. A report of successful program completion may produce a dismissal of charges as well as the waiving of outstanding court fines and fees. Telephone Interview with Margot Keener, Program/Project Specialist at the Bernalillo County Metropolitan Court (Aug. 16, 2022).

## I. FINDINGS

### A. Sex, Race, Age, and Location

Thirty percent of unhoused individuals in this dataset were reported as women, 70% were reported as men, and three were reported as both men and women. For example, one trans woman was consistently identified as male in court records, while law enforcement officers noted in their complaint narratives that she identified as a female and had a preferred name.<sup>10</sup>

Seventy-two percent of the criminal complaints were filed against men—1,108 misdemeanor-only complaints and 281 felony complaints. Twenty-eight percent of the criminal complaints were filed against women—434 misdemeanor-only complaints and 87 felony complaints. The remaining fourteen complaints were filed against trans women—twelve misdemeanor-only complaints and two felony complaints.

The race of an arrestee was often difficult to determine because the forms most used to open a criminal case in metro court (“criminal complaint” and the New Mexico Uniform Traffic Citation) did not include a field for race. Only the booking sheet included a field for race. Therefore, identifying the race of an arrestee often required searching across an arrestee’s case history to find a case file that included a booking sheet. The race categories most used by Bernalillo County law enforcement officers are White, Black, American Indian, and Hispanic.

These categories likely correspond to white (non-Hispanic), Black (all), American Indian (all), and white (Hispanic). According to Data USA, the racial make-up of Albuquerque is 38% white (non-Hispanic), 32% White (Hispanic), 3% Black, and 4% American Indian.<sup>11</sup>

The 867 unhoused individuals in this dataset were 31% White, 26% Hispanic, 9% Black, 19% American Indian, and 14% unknown.<sup>12</sup> The average number of complaints per person by race was 3.1 for Blacks, 2.5 for Hispanics, 2.4 for Whites, and 1.9 for American Indians.

Race	Number of Individuals (867)	Number of Complaints (1,924)	Complaints per Person
White	272	652	2.4
Black	80	244	3.1
American Indian	165	314	1.9
Hispanics	225	564	2.5

As of December 31, 2020, the average and median age of unhoused individuals in this dataset was 40 years old and 38 years old, respectively.

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10. Criminal Complaint, *State v. Etsitty*, T-4-CR-2020-003112 (N.M. Bernalillo Cnty. Metro. Ct., May 21, 2020).

11. *Albuquerque, NM*, DATA USA, <https://datausa.io/profile/geo/albuquerque-nm#demographics> [<https://perma.cc/5LAU-CGTY>] (last updated 2020).

12. *Supra* note 8.

Finally, 51% of the cases filed against the unhoused arose on commercial property. Half of those cases occurred at box stores (e.g., Walmart, Target, Home Depot), gas stations and convenience stores (e.g., Circle K, 7-Eleven, Speedway), grocery stores (e.g., Albertsons, Silver Street Market), and fast-food restaurants (e.g., McDonald's). Thirty-four percent of the cases occurred on public property (e.g., public parks and streets) and 15% on residential property (e.g., houses and apartment complexes).

## B. Charges Filed Against the Unhoused

### *i. Trespasses Against Property*

In 2020, the unhoused were charged with committing 3,017 crimes. Eighty-five percent of those crimes were classified as misdemeanors, and 15% were classified as felonies. Eighty-five percent of the felonies filed against the unhoused were classified as fourth-degree felonies. No unhoused individual in this dataset was charged with committing a first-degree felony.

The most common category of charges filed against the unhoused was for misdemeanor trespasses against property (1,059) which includes criminal trespass (744); unlawful entry, camping, and erecting structures in public parks (150); criminal damage to property (96); and obstructing movement on public sidewalks, streets, and alleyways (50).

Unhoused people were arrested for camping in/at/on or near city parks,<sup>13</sup> bike trails,<sup>14</sup> churches,<sup>15</sup> State trust lands,<sup>16</sup> the Bosque,<sup>17</sup> parking lots,<sup>18</sup> property of the New Mexico Department of Transportation (“DOT”),<sup>19</sup> vacant lots,<sup>20</sup>

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13. See e.g., Criminal Complaint, *State v. Gibson*, T-4-CR-2020-1316 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 19, 2020); Citation, *State v. Andrews*, T-4-CR-2020-3218 (N.M. Bernalillo Cnty. Metro. Ct., May 27, 2020); Citation, *State v. Hasenwinkle*, T-4-CR-2020-3262 (N.M. Bernalillo Cnty. Metro. Ct., May 27, 2020); Citation, *State v. Wenze*, T-4-CR-2020-3500 (N.M. Bernalillo Cnty. Metro. Ct., June 12, 2020).

14. See e.g., Citation, *State v. Gallegos*, T-4-CR-2020-23 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 2, 2020).

15. See e.g., Citation, *State v. Duran*, T-4-CR-2020-1592 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 27, 2020).

16. See e.g., Citation, *State v. Stanford*, T-4-CR-2020-1432 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 24, 2020).

17. See e.g., Citation, *State v. L'esperance*, T-4-CR-2020-609 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 22, 2020).

18. See e.g., Citation, *State v. Morford*, T-4-CR-2020-866 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 3, 2020).

19. See e.g., Criminal Complaint, *State v. Nelson*, T-4-CR-2020-1261 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 18, 2020) [hereinafter Criminal Complaint, *Nelson* 1261].

20. See e.g., Criminal Complaint, *State v. Larsen*, T-4-CR-2020-1398 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 21, 2020).

landscaping,<sup>21</sup> sidewalks,<sup>22</sup> alleyways,<sup>23</sup> dumpsters,<sup>24</sup> “open space,”<sup>25</sup> freeways,<sup>26</sup> overpasses,<sup>27</sup> cemeteries,<sup>28</sup> railroad tracks,<sup>29</sup> bridges,<sup>30</sup> apartment complexes,<sup>31</sup> and community centers.<sup>32</sup>

In addition, unhoused individuals were arrested for sleeping in/at/on or near freeways,<sup>33</sup> churches,<sup>34</sup> hotel hallways,<sup>35</sup> bushes,<sup>36</sup> pickup trucks,<sup>37</sup> front entrances,<sup>38</sup>

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21. See e.g., Criminal Complaint, *State v. Richie*, T-4-CR-2020-2603 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 21, 2020).

22. See e.g., Criminal Complaint, *State v. Karty*, T-4-CR-2020-3336 (N.M. Bernalillo Cnty. Metro. Ct., June 2, 2020); Criminal Complaint, *State v. Lester*, T-4-CR-2020-7123 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 28, 2020).

23. See e.g., Criminal Complaint, *State v. Robert*, T-4-CR-2020-3517 (N.M. Bernalillo Cnty. Metro. Ct., June 15, 2020).

24. See e.g., Criminal Complaint, *State v. Byrne*, T-4-CR-2020-1991 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 16, 2020).

25. See e.g., Criminal Complaint, *State v. Zlotkowski*, T-4-CR-2020-3621 (N.M. Bernalillo Cnty. Metro. Ct., June 17, 2020).

26. See e.g., Citation, *State v. McCartney*, T-4-CR-2020-1026 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 6, 2020).

27. See e.g., Citation, *State v. Teal*, T-4-CR-2020-3427 (N.M. Bernalillo Cnty. Metro. Ct., June 10, 2020).

28. See e.g., Citation, *State v. Garcia*, T-4-CR-2020-4311 (N.M. Bernalillo Cnty. Metro. Ct., July 29, 2020).

29. See e.g., Citation, *State v. Emerson*, T-4-CR-2020-6031 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 28, 2020).

30. See e.g., Citation, *State v. Pisco*, T-4-CR-2020-6618 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 30, 2020).

31. See e.g., Criminal Complaint, *State v. Anaya*, T-4-CR-2020-6325 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 13, 2020).

32. See e.g., Criminal Complaint, *State v. Hernandez*, T-4-CR-2020-6898 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 13, 2020).

33. See e.g., Criminal Complaint, *State v. Thompson*, T-4-CR-2020-1488 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 25, 2020).

34. See e.g., Criminal Complaint, *State v. Garza*, T-4-CR-2020-1522 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 27, 2020); Citation, *State v. Sandoval*, T-4-CR-2020-410 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 15, 2020); Citation, *State v. Chavez*, T-4-CR-2020-1139 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 13, 2020).

35. See e.g., Criminal Complaint, *State v. Traub*, T-4-CR-2020-1820 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 6, 2020).

36. See e.g., Criminal Complaint, *State v. Romero*, T-4-CR-2020-320 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 13, 2020) [hereinafter Criminal Complaint, *Romero* 320]; Criminal Complaint, *State v. Bell*, T-4-CR-2020-3595 (N.M. Bernalillo Cnty. Metro. Ct., June 17, 2020).

37. See e.g., Criminal Complaint, *State v. Nicasio*, T-4-CR-2020-646 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 27, 2020); Criminal Complaint, *State v. Hayes-Duncan*, T-4-CR-2020-1712 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 3, 2020).

38. See e.g., Criminal Complaint, *State v. Hicks*, T-4-CR-2020-780 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 31, 2020).

restaurants,<sup>39</sup> bus benches,<sup>40</sup> roofs,<sup>41</sup> patios,<sup>42</sup> porches,<sup>43</sup> welcome mats,<sup>44</sup> stairs,<sup>45</sup> storerooms,<sup>46</sup> culverts,<sup>47</sup> trash bins and dumpsters,<sup>48</sup> garages,<sup>49</sup> and laundry rooms.<sup>50</sup>

Finally, unhoused individuals were arrested for squatting in houses,<sup>51</sup> boarded-up and abandoned apartments,<sup>52</sup> vacant trailers,<sup>53</sup> sheds,<sup>54</sup> vacant businesses,<sup>55</sup> and RVs.<sup>56</sup>

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39. See, e.g., Criminal Complaint, *State v. Swindell*, T-4-CR-2020-972 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 7, 2020); Criminal Complaint, *State v. Trujillo*, T-4-CR-2020-1036 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 7, 2020); Citation, *State v. Bentele*, T-4-CR-2020-1247 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 18, 2020).

40. See, e.g., Criminal Complaint, *State v. Lee*, T-4-CR-2020-2034 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 19, 2020).

41. See, e.g., Criminal Complaint, *State v. Nevarez*, T-4-CR-2020-2554 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 21, 2020).

42. See, e.g., Citation, *State v. Deininger*, T-4-CR-2020-3401 (N.M. Bernalillo Cnty. Metro. Ct., June 9, 2020).

43. See, e.g., Criminal Complaint, *State v. Orozco*, T-4-CR-2020-5756 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 10, 2020).

44. See, e.g., Criminal Complaint, *State v. Chandler*, T-4-CR-2020-3543 (N.M. Bernalillo Cnty. Metro. Ct., June 15, 2020).

45. See, e.g., Citation, *State v. Dean*, T-4-CR-2020-4832 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 25, 2020).

46. See, e.g., Criminal Complaint, *State v. Baldonado*, T-4-CR-2020-4882 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 21, 2020).

47. See, e.g., Citation, *State v. Mace*, T-4-CR-2020-5523 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 30, 2020).

48. See, e.g., Criminal Complaint, *State v. McCloud*, T-4-CR-2020-5595 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 2, 2020); Criminal Complaint, *State v. DeBaca*, T-4-CR-2020-6917 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 15, 2020) [hereinafter Criminal Complaint, *DeBaca* 6917].

49. See, e.g., Criminal Complaint, *State v. Ragland*, T-4-CR-2020-6015 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 26, 2020).

50. See, e.g., Criminal Complaint, *State v. Fresquez*, T-4-CR-2020-6171 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 5, 2020).

51. See, e.g., Criminal Complaint, *State v. Correa*, T-4-CR-2020-3622 (N.M. Bernalillo Cnty. Metro. Ct., June 17, 2020); Criminal Complaint, *State v. Armendariz*, T-4-CR-2020-68 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 5, 2020); Criminal Complaint, *State v. Burwell*, T-4-CR-2020-2352 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 1, 2020) [hereinafter Criminal Complaint, *Burwell* 2352].

52. See, e.g., Citation, *State v. Beckom*, T-4-CR-2020-566 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 22, 2020); Criminal Complaint, *State v. Gutierrez*, T-4-CR-2020-1441 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 25, 2020); Criminal Complaint, *State v. Smith*, T-4-CR-2020-420 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 17, 2020); Citation, *State v. Carnet*, T-4-CR-2020-1428 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 24, 2020).

53. See, e.g., Criminal Complaint, *State v. Montano*, T-4-CR-2020-1403 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 21, 2020).

54. See, e.g., Criminal Complaint, *State v. Overton*, T-4-CR-2020-1417 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 24, 2020).

55. See, e.g., Criminal Complaint, *State v. Fonseca*, T-4-CR-2020-1786 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 6, 2020).

56. See, e.g., Criminal Complaint, *State v. Madden*, T-4-CR-2020-2447 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 14, 2020).

ii. *Interference with Law Enforcement*

The second most common category of charges filed against unhoused individuals was for “interference with law enforcement” (“ILE”) (437) which includes resisting, evading, or obstructing an officer (148); concealing one’s identity (134); battery (51) and assault (38) upon a peace officer; tampering with evidence (23); and refusing to obey (18).<sup>57</sup> In fact, 25% of the unhoused in this dataset were charged one or more times with ILE. In addition, in thirty-six of the misdemeanor-only complaints, resisting and/or concealing identity were the only charges filed against the defendant.

Broken down by race, the average number of ILE charges per complaint were Whites – 0.22, American Indians – 0.23, Hispanics – 0.25, and Blacks – 0.26. However, two White defendants, both deemed incompetent by the courts in 2020, were each charged with sixteen ILE offenses.<sup>58</sup> If these two outliers are substituted with the mean of two ILE charges per person, then the average number of charges per complaint for whites drops to 0.20.

Race	Total Complaints	Individuals Charged with ILE	Number of ILE Charges	ILE Charges per Complaint
White	652	68	146	0.22
Black	244	31	64	0.26
American Indian	314	45	73	0.23
Hispanic	564	69	142	0.25

After reading thousands of criminal complaints, it is abundantly clear that the charge of interference, especially the misdemeanor charges of resisting, fleeing, failing to obey, and assault, are “law enforcement tool[s] used to punish non-cooperative suspects.”<sup>59</sup> Charges of interference are “not used to protect officer safety or promote public safety, but instead officers use the [charges] as a discretionary tool” to target those who disrespect authority and penalize the vulnerable.<sup>60</sup> These charges epitomize the way that the policing of the unhoused is more about social control than public safety.<sup>61</sup> Notably, officers also use their tremendous discretionary powers to punish disrespect by charging arrestees with

57. *Supra* note 8.

58. Judah was charged with 16 ILE in a single complaint. Criminal Complaint, *State v. Sanchez*, T-4-CR-2020-1373 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 23, 2020) [hereinafter Criminal Complaint, *Sanchez* 1373] (booked for 16 ILE charges). Dawn was charged with 16 ILEs total, and 15 ILEs in a single complaint. See Criminal Complaint, *State v. Wellington*, T-4-FR-2020-1776 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 10, 2020); Criminal Complaint, *State v. Wellington*, T-4-CR-2020-0597 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 3, 2020).

59. Scott Holmes, *Resisting Arrest and Racism – The Crime of “Disrespect,”* 85 UMKC L. REV. 625, 628 (2017).

60. *Id.* at 628–29.

61. *See id.*



other petty crimes. The case of Joleen Nez is a perfect example. Joleen was charged with littering, although her real so-called crime was her failure to obey when, despite being warned of the consequences of her disobedience, she refused to pick up a kicked-over cup that was not hers.<sup>62</sup>

*iii. Larceny*

The third most common category of charges filed against the unhoused was for misdemeanor larceny (369), which includes shoplifting. Nearly one-half of all shoplifting incidents occurred at Walmart and Target. These big box stores are swarming with private security. In addition, they are frequently patrolled by APD officers working “chief’s over-time.”<sup>63</sup> In 2020, 274 officers worked 35,659.5 hours and earned over two million public or tax-payer dollars, serving as armed asset protectors for multi-billion-dollar corporations, including Walmart, Home Depot, Lowes, Target, Whole Foods, Best Buy, and Albertsons. In fact, thirty-three officers earned more than \$20,000 in chief’s overtime, with fifteen of those officers earning between \$20-30,000, twelve earning between \$30-40,000, four earning between \$40-50,000, and two earning more than \$70,000.

Meanwhile, unhoused individuals were arrested for stealing the following items worth less than ten dollars: food,<sup>64</sup> candy,<sup>65</sup> a pair of pants,<sup>66</sup> a cup of coffee,<sup>67</sup> energy drinks,<sup>68</sup> a wallet,<sup>69</sup> beer,<sup>70</sup> a bottle of mouthwash,<sup>71</sup> a can of body spray,<sup>72</sup>

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62. *State v. Nez*, T-4-CR-2020-002759 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 16, 2020).

63. Data on Chief’s Overtime was obtained through a public record request to the city of Albuquerque and is on file with the author.

64. *E.g.*, Criminal Complaint, *State v. Stanford*, T-4-CR-2020-6506 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 23, 2020).

65. *E.g.*, Citation, *State v. Cordero*, T-4-CR-2020-423 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 15, 2020).

66. *E.g.*, Citation, *State v. Williams*, T-4-CR-2020-428 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 15, 2020).

67. *E.g.*, Criminal Complaint, *State v. Baca*, T-4-CR-2020-1416 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 21, 2020).

68. *E.g.*, Citation, *State v. Garcia*, T-4-CR-2020-1552 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 26, 2020); Criminal Complaint, *State v. Zlotkowski*, T-4-CR-2020-2938 (N.M. Bernalillo Cnty. Metro. Ct., May 12, 2020).

69. *E.g.*, Citation, *State v. Bruce*, T-4-CR-2020-1647 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 28, 2020).

70. *E.g.*, Criminal Complaint, *State v. Sierota*, T-4-CR-2020-1929 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 11, 2020) [hereinafter Criminal Complaint, *Sierota* 1929]; Criminal Complaint, *State v. Fernandez*, T-4-CR-2020-2342 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 1, 2020).

71. *E.g.*, Criminal Complaint, *State v. Kinsel*, T-4-CR-2020-2436 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 14, 2020); Citation, *State v. Semallie*, T-4-CR-2020-3867 (N.M. Bernalillo Cnty. Metro. Ct., July 6, 2020).

72. *E.g.*, Criminal Complaint, *State v. Alonzo*, T-4-CR-2020-2725 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 29, 2020).

mini bottles of wine,<sup>73</sup> a fountain drink,<sup>74</sup> body lotion,<sup>75</sup> sodas,<sup>76</sup> and other undescribed merchandise.<sup>77</sup>

*iv. Possession, Disorderly Conduct, and Battery*

In addition to the above categories, the most common charges filed against the unhoused were possession of drug paraphernalia (133), possession of controlled substances (usually heroin and/or methamphetamines) (125), disorderly conduct (111), and simple battery (103).

**C. Summons and Bookings Data**

At the time the misdemeanor-only complaints were filed with the metro court, the defendant was summoned nearly 77% of the time and booked only 23% of the time. In two cases, misdemeanor-only complaints were filed against unhoused people who were already in jail. A couple factors contribute to the high percentage of people being summoned rather than booked. First, per the McClendon settlement agreement, APD does not arrest “persons alleged to have committed non-violent misdemeanor offenses (not to include DWIs) . . . when there are no circumstances necessitating an arrest.”<sup>78</sup> Second, in 10% of the cases<sup>79</sup> in which the person is summoned rather than booked, there was no interaction between the person alleged to have committed an offense and a law enforcement officer. This happens frequently

73. *E.g.*, Citation, *State v. Martine*, T-4-CR-2020-4284 (N.M. Bernalillo Cnty. Metro. Ct., July 28, 2020).

74. *E.g.*, Criminal Complaint, *State v. Williams*, T-4-CR-2020-5255 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 16, 2020).

75. *E.g.*, Criminal Complaint, *State v. Hovel*, T-4-CR-2020-6522 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 23, 2020).

76. *E.g.*, Criminal Complaint, *State v. Eaton*, T-4-CR-2020-6328 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 13, 2020) [hereinafter Criminal Complaint, *Eaton*, 6328].

77. Citation, *State v. Gonnie*, T-4-CR-2020-825 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 29, 2020) (shoplifting “\$4 worth of items”); Citation, *State v. Bitsie*, T-4-CR-2020-1387 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 21, 2020) (concealing merchandise “valued at \$4.99”); Criminal Complaint, *State v. Moya*, T-4-CR-2020-1459 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 25, 2020) (taking “\$1.47 worth of merchandise”); Citation, *State v. Devolk*, T-4-CR-2020-6085 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 2, 2020) [hereinafter Citation, *Devolk*, 6085] (taking “\$9.77 worth of items”).

78. Settlement Agreement at 2, *McClendon v. City of Albuquerque*, Case No. Civ. 95-CV-00024 (D.N.M. July 10, 2017), <https://www.cabq.gov/police/documents/mcclendon-settlement-agreement-english.pdf> [<https://perma.cc/9C2P-PLY7>]; *see also* Criminal Complaint, *State v. Armijo*, T-4-CR-2020-1321 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 19, 2020) (“[D]ue to the McClendon settlement a summons would be more appropriate of a disposition.”); Criminal Complaint, *State v. Qualo*, T-4-CR-2020-1612 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 27, 2020) (“[P]er McClendon, in lieu of taking him to jail, Linden was advised that he would be summonsed for the listed charges.”).

79. This is likely a significant undercounting of the number of cases filed with the metro court in which there is no interaction between the alleged offender and a law enforcement officer. For example, many citations submitted for shoplifting, are ambiguous as to whether the law enforcement officer interacted with the alleged offender. In addition, many box stores have policies that limit the amount of time they may detain a suspected shoplifter. *See* Criminal Complaint, *State v. Lobley*, T-4-CR-2020-704 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 27, 2020) (stating that a suspected shoplifter at Target had to be released due to apparent time delay); Criminal Complaint, *State v. Vivian*, T-4-CR-2020-837 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 3, 2020) (reporting that an alleged shoplifter at Walmart had to be released due to a time delay).

in cases involving shoplifting where private security officers delay their reporting of shoplifting incidents and then batch deliver their investigative reports and video evidence to public law enforcement officers who then process the complaints and file them at metro court.<sup>80</sup>

In 76% of the cases in which an unhoused defendant was summoned to appear in court, they failed to appear one or more times. Each time they failed to appear, the court issued a warrant for their arrest. Upon arrest, those unable to pay a bond to eliminate the warrant spent a couple days in jail to ensure they were brought before a judge to account for their crimes. Unsurprisingly, in 73% of the cases in which the defendant failed to appear in court, notice of when to appear was returned to sender (the court) one or more times.

Of those misdemeanants booked at the time of their arrest, 38% had outstanding warrants. Another 8% of the complaints involved a battery charge(s). Finally, there were misdemeanants who were booked upon arrest who had neither committed a violent offense nor had an outstanding warrant for their arrest, but they were arrested because the arresting officer did not believe they could prevent the arrestee from committing additional criminal offenses.<sup>81</sup>

In 96% of the felony complaints, the defendant was booked at the time of arrest. In thirteen cases, felony complaints were filed against unhoused people who were already jailed. In only one case was the defendant not booked or already in jail at the time the felony complaint was filed against him.<sup>82</sup>

In conclusion, in 2020, 49% of the unhoused in this dataset were booked a total of 720 times at the time of their arrest. However, there were an additional 424 bookings in 2020 as a consequence of the court ordering the defendant arrested for their failure to appear or obey conditions of release. Therefore, 62% of the unhoused were booked into the MDC 1,144 times in 2020. Of the individuals not booked in 2020, 20% were booked 200 times between January 1, 2021, and July 1, 2022. In total, 70% of the unhoused were booked 1,344 times.

Finally, of the unhoused never booked, 45% remain “in warrant” and are likely to be booked before the complaints against them are finally disposed. Of the remaining 143 individuals not booked but whose cases have been closed, 20% had their complaints dismissed through Outreach Court, and at least two individuals died before being booked.<sup>83</sup>

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80. See Criminal Complaint, *State v. Beckom*, T-4-CR-2020-1948 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 12, 2020) (“reporting a delayed” shoplifting to the Coronado Mall substation); Criminal Complaint, *State v. Oliver*, T-4-CR-2020-2064 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 19, 2020) (“reporting a delayed [s]hoplifting” to the Coronado Mall substation).

81. See Criminal Complaint, *State v. Colhouer*, T-4-CR-2020-5050 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 7, 2020) (“I did not fee[I] that I would be able to release David without receiving subsequent calls for service.”); Criminal Complaint, *State v. Brammer*, T-4-CR-2020-1297 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 19, 2020) (explaining that “multiple attempts at jail diversion” had failed to prevent the arrestee from reoffending).

82. See Register of Actions, *State v. Wilson*, T-4-FR-2020-5646 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 2, 2020) (indicating that “defendant was not booked into MDC on 12/2/2020”).

83. See Register of Actions, *State v. Mahan*, T-4-CR-2020-6830 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 9, 2020); Register of Actions, *State v. Martinez*, T-4-CR-2020-1182 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 14, 2020).

#### D. Warrants, Fines and Fees, and Final Dispositions

In its effort to hear, examine, and dispose of the 1,924 criminal cases filed by law enforcement, the courts issued 1,917 warrants against 716 unhoused individuals. Each time a warrant was issued, a \$100 fine was imposed. Additional fees were assigned to defendants when they were convicted. As of July 1, 2022, the court had assessed \$232,250 in fines and fees against 737 unhoused individuals. Sixty-six percent of them paid off their debt by serving time in jail. In fact, the entry in the case file indicating this practice reads, “jail in lieu of fines and fees.” Of the 249 individuals who were fined but have not been jailed to service that debt, 55% remain “in warrant.” An additional 12% were relieved of their debt by order of the court following their referral to Outreach Court.<sup>84</sup>

Of the 1,924 cases filed, 62% were dismissed, 25% ended with a conviction, 12% remain open due to the defendant being “in warrant,” and 1% are still awaiting a final disposition.

#### E. Unhoused and Mentally Ill

Many of the 867 unhoused people in this dataset struggle with mental illness. In 2020, the courts ordered competency evaluations for 11% of the unhoused and deemed seventy-four of them incompetent to stand trial. In addition, there are unhoused people in this dataset who were not diagnosed incompetent in 2020 but who have been diagnosed incompetent in previous or succeeding years.<sup>85</sup> Finally, there were people not formally diagnosed as incompetent but described or suspected of being mentally ill by either the caller, victim, or arresting officer.<sup>86</sup>

84. See, e.g., Register of Actions, *State v. Bessom*, T-4-CR-2020-2142 (N.M. Bernalillo Cty. Metro. Ct., Oct. 2, 2020); Register of Actions, *State v. Aragon*, T-4-CR-2020-4057 (N.M. Bernalillo Cty. Metro. Ct., Nov. 19, 2020); Register of Actions, *State v. Santistevan*, T-4-CR-2020-3104 (N.M. Bernalillo Cty. Metro. Ct., Feb. 19, 2021).

85. See Register of Actions, *State v. Bailon*, T-4-CR-2014-10723 (N.M. Bernalillo Cty. Metro. Ct., June 14, 2014); Register of Actions, *State v. Gallaway*, T-4-CR-2018-6683 (N.M. Bernalillo Cty. Metro. Ct., Oct. 4, 2018); Register of Actions, *State v. Mensch*, T-4-CR-2018-7652 (N.M. Bernalillo Cty. Metro. Ct., Nov. 26, 2018); Register of Actions, *State v. Cano*, T-4-CR-2018-4970 (N.M. Bernalillo Cty. Metro. Ct., July 19, 2018); Register of Actions, *State v. Carnet*, T-4-CR-2019-8659 (N.M. Bernalillo Cty. Metro. Ct., Dec. 23, 2019); Register of Actions, *State v. Hicks*, T-4-CR-2019-3839 (N.M. Bernalillo Cty. Metro. Ct., June 11, 2019); Register of Actions, *State v. Russey*, T-4-CR-2019-2316 (N.M. Bernalillo Cty. Metro. Ct., Apr. 10, 2019); Register of Actions, *State v. Buschardt*, D-202-CR-2019-3682 (N.M. 2<sup>nd</sup> Judicial Dist. Ct., Nov. 15, 2019); Register of Actions, *State v. Graham*, T-4-CR-2019-1002 (N.M. Bernalillo Cty. Metro. Ct., Feb. 11, 2021); Register of Actions, *State v. Copeland*, T-4-CR-2021-11 (N.M. Bernalillo Cty. Metro. Ct., Jan. 3, 2021); Register of Actions, *State v. Gentry*, T-4-CR-2021-2123 (N.M. Bernalillo Cty. Metro. Ct., Apr. 30, 2021); Register of Actions, *State v. Gonnies*, T-4-CR-2021-1913 (N.M. Bernalillo Cty. Metro. Ct., Apr. 19, 2021).

86. See Criminal Complaint, *State v. Williams*, T-4-CR-2020-2751 (N.M. Bernalillo Cty. Metro. Ct., Apr. 29, 2020) (officer noting that suspect “appeared to have an unknown type of mental illness”); Criminal Complaint, *State v. Hackett*, T-4-CR-2020-4340 (N.M. Bernalillo Cty. Metro. Ct., July 30, 2020) (officer remarking that the suspect was “homeless and was suffering from mental illness (dementia)”); Criminal Complaint, *State v. Martinez*, T-4-CR-2020-4412 (N.M. Bernalillo Cty. Metro. Ct., Aug. 5, 2020) (suspect’s brother reported that his sister was having a “mental health episode” and “suffers from bi-polar disorder”); Criminal Complaint, *State v. Martine*, T-4-CR-2020-4754 (N.M. Bernalillo Cty. Metro. Ct., Aug. 21, 2020) (officer noting the suspect was talking to himself and possibly

Law enforcement filed 405 criminal complaints against the one hundred<sup>87</sup> unhoused individuals who were suspected and/or deemed incompetent—300 misdemeanor-only complaints and 105 felony complaints. Those charged with only misdemeanors were summoned 67% of the time and booked, at time of arrest, 33% of the time. As of July 1, 2022, however, this group of defendants had been booked 311 times—204 bookings occurring at time of arrest, while the remaining 107 bookings resulted from court-issued warrants due to the defendant’s failure to appear. Nonetheless, 90% of the complaints filed against them were ultimately dismissed.

Incredibly, 55% of the unhoused suspected or deemed incompetent by the courts were charged with interfering with law enforcement. A shocking 24% of them experienced one or more instances of force by law enforcement.

#### F. Use of Force

APD has a well-established reputation of being one of the most violent police forces in the country. In 2014, a United States Department of Justice (“DOJ”) investigation found that APD had “engaged in a pattern or practice of excessive force that violates the Constitution and federal law.”<sup>88</sup> Specifically, the DOJ found that APD too frequently uses deadly force, unnecessarily uses less than lethal force against persons who pose a minimal threat to officers, and too frequently uses force against mentally ill individuals.<sup>89</sup> Consequently, the DOJ and Albuquerque entered into a court-enforceable settlement agreement (“CASA”) to implement sweeping reforms on the use of force by APD.<sup>90</sup> The goal was to steer APD toward constitutional policing.<sup>91</sup> APD’s compliance with the settlement agreement continues to be independently monitored. In the Independent Monitor’s thirteenth report, covering August 2020 through January 2021, the monitor reported that APD continues to use excessive and improper force and, more concerning, lacks the desire to take “serious approaches to control excessive or unwarranted uses of force during

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had some mental health issues); Criminal Complaint, *State v. Emerson*, T-4-CR-2020-5637 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 2, 2020) [hereinafter Criminal Complaint, *Emerson* 5637] (officer suspecting that naked woman claiming to be Jesus was having a “mental episode”); Criminal Complaint, *State v. Garcia*, T-4-CR-2020-6547 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 23, 2020) (officer reporting that “the subject had been diagnosed with mood disorder, psychosis, anxiety, and known to use ‘meth’”).

87. One of the unhoused had three cases dismissed due to his incompetence, but no diagnostic evaluation was ordered in 2020. See Register of Actions, *State v. Azure*, T-4-FR-2020-1494 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 21, 2020).

88. *Justice Department Releases Investigative Findings on the Albuquerque Police Department*, JUSTICE.GOV (Jan. 26, 2015), <https://www.justice.gov/usao-nm/pr/justice-department-releases-investigative-findings> [<https://perma.cc/NS9L-8SMK>].

89. *Id.*

90. *Justice Department Reaches Agreement with the City of Albuquerque to Implement Sweeping Reforms on Use of Force*, JUSTICE.GOV (Jan. 26, 2015), <https://www.justice.gov/usao-nm/pr/justice-department-reaches-agreement-city-albuquerque-implement-sweeping-reforms-use> [<https://perma.cc/XX2K-8B44>].

91. *See id.*

its police operations in the field.”<sup>92</sup> Among cities with more than 500,000 people, Albuquerque has had the second highest rate of fatal police shootings since 2015.<sup>93</sup> According to APD’s most recent use-of-force report, APD has seen a consistent rise in use of force cases since 2016.<sup>94</sup> In 2020, APD reported 920 use-of-force cases—3.2 force cases per 1,000 calls for service.<sup>95</sup> By comparison, 7% of Albuquerque’s unhoused experienced seventy-one uses of force arising from 1,808 interactions with officers or thirty-nine force cases per 1,000 interactions. Eighty-two percent of the unhoused who experienced force were men. Finally, of the unhoused who experienced force, 35% were Hispanic, 32% White, 17% American Indian, and 13% Black.

## II. ILLUSTRATIONS

The following case briefs and defendant profiles are provided to illustrate what Bernalillo County patrol officers (mostly APD) did on a daily basis in 2020. The events detailed are drawn solely from complaints written by law enforcement officers. In these complaints, law enforcement officers often depict themselves as heroes, as they impartially enforce the laws, use force only when necessary, see to it that the bad guys are punished and locked away, and in so doing, make our communities safer. Unfortunately, most of what they do is completely futile. Our communities are no safer as a result of their efforts, and few of the unhoused benefit from their interactions with law enforcement officers. Instead, the unhoused remain trapped in an endless cycle of arrest, warrant, jail, and state violence, exacerbated by grinding poverty, drug addiction, and mental health issues.<sup>96</sup>

### A. Complaint Briefs

#### *i. Trespass Against Property*

Private security at a commercial property flagged down officers regarding a loiterer.<sup>97</sup> When officers asked Paul why he had not left when asked, Paul replied that it was rainy outside, and he was not ready to leave.<sup>98</sup> As officers attempted to verify Paul’s identity, they discovered that he had lied to them to conceal his

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92. JAMES D. GINGER & PUB. MGMT. RES., INC., MONITOR’S THIRTEENTH REPORT: COMPLIANCE LEVELS OF THE ALBUQUERQUE POLICE DEPARTMENT WITH REQUIREMENTS OF THE COURT-APPROVED SETTLEMENT AGREEMENT 1-2 (2021), <https://www.justice.gov/usao-nm/file/1404816/download> [<https://perma.cc/7GD2-EUQ2>].

93. John Acosta, *New Mexico Has the Second-Highest Fatal Police Shooting Rate in US – Is It Ready to Change?*, THE GUARDIAN (May 6, 2021, 6:00 AM), <https://www.theguardian.com/us-news/2021/may/06/albuquerque-new-mexico-fatal-police-shootings> [<https://perma.cc/NC8K-LU4G>].

94. ALBUQUERQUE POLICE DEPARTMENT, PRELIMINARY ANNUAL FORCE REPORT 7, 9 (2020), <https://www.cabq.gov/police/documents/final-2020-preliminary-annual-use-of-force-report.pdf> [<https://perma.cc/TX66-8CSS>].

95. *Id.* at 7, 9.

96. For many, the endless cycle includes a trip to the hospital, an arrest warrant, jail, or arrest.

97. Criminal Complaint, *State v. Montoya*, T-4-CR-2020-2173 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 26, 2020).

98. *Id.*

identity.<sup>99</sup> When they attempted to arrest him, Paul stood up and tried to run.<sup>100</sup> Both public and private officers grabbed hold of Paul and attempted to take him to the ground.<sup>101</sup> Paul resisted, and officers used force to take him into custody.<sup>102</sup> Officers then called the paramedics.<sup>103</sup> While waiting for paramedics, Paul appeared to have two small seizures.<sup>104</sup> He laid back, started shaking, and hit the back of his head on the sidewalk.<sup>105</sup> Paramedics transported Paul to the University of New Mexico Hospital (“UNM Hospital”).<sup>106</sup> Later, Paul was booked for criminal trespass and two felony warrants.<sup>107</sup>

While conducting a “welfare check” at Phil Chacon Park, an officer observed Lysa camping on the south side of the park.<sup>108</sup> The officer advised Lysa to leave the area, or she would be issued a criminal citation.<sup>109</sup> Lysa became angry, started to yell at officers, grabbed some of her belongings, and ran out of the park.<sup>110</sup> Later, Lysa returned to her camp built of sticks and tarps.<sup>111</sup> Officers also returned and notified Lysa that there was an outstanding misdemeanor warrant for her arrest.<sup>112</sup> Again, Lysa ran from the park.<sup>113</sup> Officers completed their welfare check by removing the sticks and tarps Lysa had used to build her camp and notifying parks and recreation of the “trash” left behind.<sup>114</sup> Lysa was summoned for criminal trespass and erecting structures in parks.<sup>115</sup>

A patrol officer observed a group of people sitting on the sidewalk.<sup>116</sup> As he approached the group and began speaking with them, he “noticed one of them was sitting with her feet extended . . . in a way that obstructed that natural flow of pedestrian traffic on the sidewalk.”<sup>117</sup> When the officer approached Teeyah, she became verbally aggressive, called him a “fat fuck,” and wished aloud she had a

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99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Criminal Complaint, *State v. Martinez*, T-4-CR-2020-1314 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 19, 2020) [hereinafter Criminal Complaint, *Martinez* 1314].

109. *Id.*

110. *Id.*

111. *Id.*

112. The metro court issued a warrant for Lysa’s arrest for failing to appear in court on a charge of criminally trespassing at the Cesar Chavez Community Center. Criminal Complaint, *State v. Martinez*, T-4-CR-2019-7481 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 30, 2019).

113. Criminal Complaint, *Martinez* 1314, *supra* note 108.

114. Criminal Complaint, *Martinez* 1314, *supra* note 108.

115. *See* Criminal Complaint, *Martinez* 1314, *supra* note 108.

116. Criminal Complaint, *State v. Smith*, T-4-CR-2020-1716 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 3, 2020).

117. *Id.*

sharp object to stab him with.<sup>118</sup> Afterward, Teeyah asked if she could just leave.<sup>119</sup> The officer notified her that she could not and booked her for obstructing the sidewalk and an outstanding warrant.<sup>120</sup>

Emergency dispatch sent officers to a substandard, boarded-up house in reference to a “suspicious person call.”<sup>121</sup> The caller reported that John had removed boards from the house at least three times in the past month and that he believed John “was inside the residence again.”<sup>122</sup> Officers found John inside the house.<sup>123</sup> When the officers asked John “why he kept coming back to this specific house,” he responded, ““because I’m cold.”<sup>124</sup> John was booked for criminal damage to property and criminal trespass.<sup>125</sup>

An officer responded as backup for the Supervisor of Albuquerque Family & Community Services (“AFCS”).<sup>126</sup> The AFCS Supervisor reported that over the past week “multiple homeless subjects have been contacted” at Tom Bolack Urban Forest Park and repeatedly told to tear down their tents.<sup>127</sup> The unhoused individuals had refused to do so. Vincent said he continued to stay because his girlfriend did not want to leave, and he did not want to leave his girlfriend.<sup>128</sup> The officer instructed Vincent to tear down his tent anyway.<sup>129</sup> Vincent was summoned for erecting structures in parks.<sup>130</sup>

A homeowner called police to report that Belkis had been going in and out of the residence next door despite not belonging there.<sup>131</sup> Officers performed a protective sweep of the home but found no one inside.<sup>132</sup> However, they heard noise from a backyard shed, announced themselves, and ordered anyone inside to come out.<sup>133</sup> Belkis exited the shed screaming with her hands in her pockets.<sup>134</sup> She was immediately detained.<sup>135</sup> According to the neighbor, Belkis had been living at the abandoned property for over a month and had used her water hose.<sup>136</sup> When the

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118. *Id.*

119. *Id.*

120. *Id.*

121. Criminal Complaint, *State v. Miller*, T-4-CR-2020-6448 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 20, 2020).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. Criminal Complaint, *State v. Styler*, T-4-CR-2020-829 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 30, 2020).

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Criminal Complaint, *State v. Rumbaut*, T-4-CR-2020-2791 (N.M. Bernalillo Cnty. Metro. Ct., May 4, 2020).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*



neighbor confronted her, Belkis “became very angry and started yelling.”<sup>137</sup> Belkis was booked for disorderly conduct and criminal trespass.<sup>138</sup>

The management of an apartment complex called the police to report an ongoing problem with people breaking into and living inside their storage units.<sup>139</sup> When officers arrived, it appeared that one of the storage unit’s doors had been “pried open with an unknown tool” and that people were inside.<sup>140</sup> Upon closer inspection, the unit had electricity and the occupants, Christopher and Monique, appeared to have been “living there for a while.”<sup>141</sup> Christopher and Monique were booked for felony breaking and entering and conspiracy to break and enter, respectively.<sup>142</sup>

Isiah had been “sleeping on cardboard boxes in an enclosed dumpster area” at a PetSmart.<sup>143</sup> When an officer woke him, Isiah “appeared disgruntled,” refused to speak, and communicated “with facial gestures only.”<sup>144</sup> The officer handed Isiah a notebook and asked him to write down his name.<sup>145</sup> Isiah responded by stating that he did not want to leave and that he did not know his name.<sup>146</sup> The officer transported Isiah to APD’s crime lab for fingerprints, where they learned Isiah was on probation and had not reported for more than a week.<sup>147</sup> Isiah was booked for criminal trespass and concealing his identity.<sup>148</sup>

Neighbors called police to report their suspicion that two people were preparing to break into a vacant home.<sup>149</sup> Officers spoke with the absentee owner, who confirmed no one had permission to be inside the residence.<sup>150</sup> Officers found Eucariz and Ryan inside.<sup>151</sup> Eucariz stated that they went to the vacant residence to sleep in the backyard but it got cold, so they went inside.<sup>152</sup> “Ryan stated that he was

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137. *Id.*

138. *Id.*

139. Criminal Complaint, *State v. Maldonado*, T-4-FR-2020-3825 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 18, 2020) [herein Criminal Complaint, *Maldonado* 3825]; Criminal Complaint, *State v. Montano*, T-4-FR-2020-3826 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 18, 2020) [herein Criminal Complaint, *Montano* 3826].

140. Criminal Complaint, *Maldonado* 3825, *supra* note 139; Criminal Complaint, *Montano* 3826, *supra* note 139.

141. Criminal Complaint, *Maldonado* 3825, *supra* note 139; Criminal Complaint, *Montano* 3826, *supra* note 139.

142. Criminal Complaint, *Maldonado* 3825, *supra* note 139; Criminal Complaint, *Montano* 3826, *supra* note 139.

143. Criminal Complaint, *DeBaca* 6917, *supra* note 48.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Criminal Complaint, *State v. Paisano*, T-4-CR-2020-6309 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 13, 2020) [herein Criminal Complaint, *Paisano* 6309]; *State v. Lucero*, T-4-CR-2020-6306 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 13, 2020) [herein Criminal Complaint, *Lucero* 6306].

150. Criminal Complaint, *Paisano* 6309, *supra* note 149; Criminal Complaint, *Lucero* 6306, *supra* note 149.

151. Criminal Complaint, *Paisano* 6309, *supra* note 149; Criminal Complaint, *Lucero* 6306, *supra* note 149.

152. Criminal Complaint, *Paisano* 6309, *supra* note 149; Criminal Complaint, *Lucero* 6306, *supra* note 149.

homeless, and he was looking for a place to sleep . . . and did not think it was wrong or a big deal to enter a residence without permission or which did not belong to him.”<sup>153</sup> Ryan and Eucariz were summoned for criminal trespass.<sup>154</sup>

An apartment manager called police to assist him in removing Raymond from the property.<sup>155</sup> The apartment manager told officers they evicted Raymond but permitted him to return to collect his belongings.<sup>156</sup> Raymond returned to his apartment, locked the door, and refused to leave.<sup>157</sup> Officers entered the apartment, cuffed Raymond, and transported him to the Prisoner Transport Center (“PTC”) to be booked.<sup>158</sup> While at the PTC, Raymond announced that he wished to die and was suicidal.<sup>159</sup> He was then transported to the VA Hospital and summoned for criminal damage to property.<sup>160</sup>

A tenant phoned police to report that his next-door neighbor’s daughter had broken into her apartment and could be heard talking to herself.<sup>161</sup> Officers established a perimeter around the apartment, opened the front door, and gave commands.<sup>162</sup> Joni complied with officer commands.<sup>163</sup> Joni’s mother complained that she has had an ongoing issue with her daughter breaking into her home and that she wanted to press charges.<sup>164</sup> Joni was booked for felony breaking and entering.<sup>165</sup>

## ii. *Interfering with Law Enforcement*

The Public Outreach Program Manager (“POPM”) contacted “4 transients” camping and trespassing on private property.<sup>166</sup> The POPM collected the names of the transients and gave them to an APD officer.<sup>167</sup> The officer learned that one of the “transients,” Jesus, had an outstanding misdemeanor warrant for his arrest and decided to go look for him.<sup>168</sup> The officer located Jesus at a gas station and ordered

153. Criminal Complaint, *Paisano* 6309, *supra* note 149; Criminal Complaint, *Lucero* 6306, *supra* note 149.

154. Criminal Complaint, *Paisano* 6309, *supra* note 149; Criminal Complaint, *Lucero* 6306, *supra* note 149.

155. Criminal Complaint, *State v. Skeet*, T-4-CR-2020-5246 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 10, 2020) [hereinafter Criminal Complaint, *Skeet* 5246].

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. Criminal Complaint, *State v. Montoya*, T-4-FR-2020-1860 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 15, 2020) [hereinafter Criminal Complaint, *Montoya* 1860].

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. Criminal Complaint, *State v. Hernandez*, T-4-CR-2020-1480 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 25, 2020) [hereinafter Criminal Complaint, *Hernandez* 1480]; Criminal Complaint, *State v. Hernandez*, T-4-CR-2019-5914 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 3, 2019) [hereinafter Criminal Complaint, *Hernandez* 5914].

167. Criminal Complaint, *Hernandez* 1480.

168. Jesus was wanted for resisting being arrested for improper lane change and riding in the wrong lane of traffic on a bicycle. *Id.*; Bench Warrant, *State v. Hernandez*, T-4-CR-2019-5914 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 3, 2019) T-4-CR-2019-5914.

him to stop.<sup>169</sup> Jesus refused and fled on his bicycle.<sup>170</sup> Later, Jesus returned to his camp and “acted like nothing had happened.”<sup>171</sup> Officers ordered Jesus to sit on the sidewalk.<sup>172</sup> As additional officers arrived, Jesus fled again, this time on foot through a local roofing supply business.<sup>173</sup> Officers apprehended Jesus after two customers pushed him against a fence and held him in a headlock.<sup>174</sup> Jesus was booked for criminal trespass and resisting arrest.<sup>175</sup>

An officer “conducting random patrol at Coronado Park” observed Michael violating a city ordinance which prohibits the off-road or path riding of a bicycle in a city park.<sup>176</sup> When Michael was invited to speak with officers, he “took off on his bike.”<sup>177</sup> Officers loaded into their “marked patrol units” and chased Michael through the surrounding streets.<sup>178</sup> Ultimately, officers used force to bring Michael into custody.<sup>179</sup> Michael was booked for unlawful bicycle riding, resisting arrest, and possession of drug paraphernalia.<sup>180</sup>

Patrol officers were looking for “a well-known male subject” with four active felony warrants in an area he was known to hang out in.<sup>181</sup> Officers observed a small group of people hanging out in an overflow parking area for a Travel Lodge Hotel, which was clearly marked “no trespassing.”<sup>182</sup> As the officers approached, Fabian took off running and ignored commands to stop.<sup>183</sup> Officers utilized their car lights, sirens, and PA system to persuade Fabian to stop, but he just kept running.<sup>184</sup> Eventually, the officers grabbed hold of Fabian and attempted to take him to the ground.<sup>185</sup> When they struggled to hold onto him, one of the officers tased Fabian in the back.<sup>186</sup> Finally, officers were able to place Fabian in handcuffs.<sup>187</sup> Fabian was booked for two counts of resisting arrest and criminal trespass.<sup>188</sup> Fabian was not the “well-known male subject” officers were originally looking for.<sup>189</sup>

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169. Criminal Complaint, *Hernandez* 1480.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. Criminal Complaint, *State v. Benavides*, T-4-CR-2020-2536 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 20, 2020).

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. Criminal Complaint, *State v. Hernandez*, T-4-CR-2020-2286 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 2, 2020).

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

A woman, who wished to remain anonymous, called the police to complain about a drunk “transient who was panhandling” in a northeast intersection.<sup>190</sup> When officers arrived, they observed Joe standing in the center median, “wobbling back and forth.”<sup>191</sup> Officers removed Joe from the median to keep him from falling into traffic and informed him that he needed to leave the area given his level of intoxication.<sup>192</sup> In addition, officers informed Joe that he could not simply relocate to a nearby abandoned gas station because it was posted with no trespassing signs.<sup>193</sup> Joe refused to leave, placed his hands in the air, and asked to be taken to jail.<sup>194</sup> The officers told Joe they had nothing to arrest him for but that he needed to leave the area.<sup>195</sup> Joe refused to leave the area and was booked for jaywalking and failing to obey an officer.<sup>196</sup>

911 dispatchers sent officers to a residence in a southeast neighborhood due to reports that there were people in a shed on the property.<sup>197</sup> When officers arrived, “the shed appeared to be set up as a temporary living space.”<sup>198</sup> Officers asked Gabrielle to step out of the shed and asked her name to which she replied that she would “rather not give it.”<sup>199</sup> Although Gabrielle was informed that she was required to give her name and that she would be arrested if she refused, she continued to refuse to give her name.<sup>200</sup> Officers then ordered Gabrielle to put her hands behind her back.<sup>201</sup> Gabrielle refused.<sup>202</sup> Officers then grabbed her wrists, pulled them behind her back, and cuffed her.<sup>203</sup> She was booked for concealing her identity and resisting arrest.<sup>204</sup>

A Circle K employee requested police assistance with a man disturbing customers and refusing to leave.<sup>205</sup> By the time the officers arrived, Judah was across the street from the Circle K.<sup>206</sup> Officers approached him.<sup>207</sup> Judah walked away, “refused to comply with verbal commands,” “stopped twice and got into a fighting stance and stated he would defend himself,” and continued walking away.<sup>208</sup> Fearing that they might be battered, officers surrounded Judah, grabbed him, and placed him

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190. Criminal Complaint, *State v. Melendrez*, T-4-CR-2020-227 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 11, 2020).

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. Criminal Complaint, *State v. Cinelli*, T-4-CR-2020-1800 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 8, 2020).

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. Criminal Complaint, *Sanchez* 1373, *supra* note 58, at 2.

206. *Id.*

207. *Id.*

208. *Id.*

face down on the ground.<sup>209</sup> Judah was booked for seven counts of resisting arrest and seven counts of assault on a police officer.<sup>210</sup>

A Circle K employee called the police to report people fighting.<sup>211</sup> When the officer arrived, he found Ruthie on a city bus drinking a can of beer.<sup>212</sup> The officer removed Ruthie from the bus and tossed her empty beer can on the ground.<sup>213</sup> Ruthie's "uncooperative and vulgar" behavior caused "a crowd to form."<sup>214</sup> The officer "asked Ruthie what she had in her sweater pocket and she stated beers. She reached in, grabbed one, opened it, and began drinking it on the sidewalk."<sup>215</sup> The officer "took the can from her, dumped it out[,] and stated that she cannot be doing that. Ruthie then reached inside of her jacket, grabbed another can and opened it and began drinking it."<sup>216</sup> Again, the officer grabbed the can of beer from her and dumped it out.<sup>217</sup> Officers then informed Ruthie that she would be arrested due to an outstanding warrant.<sup>218</sup> Ruthie resisted arrest by "placing her hands behind her back."<sup>219</sup> To overcome her resistance, officers took her to the ground.<sup>220</sup> Ruthie was booked for drinking in public, open container, disorderly conduct, assault upon a peace officer, and resisting arrest.<sup>221</sup>

Dispatch sent officers to a downtown intersection in reference to Norman throwing rocks at people and cars while wearing his pants "below his butt."<sup>222</sup> The officers suspected Norman was having a "mental health episode" as he was rambling, gave his name as "1847," and continued to throw rocks.<sup>223</sup> Just as officers prepared to detain him, he ran through the streets.<sup>224</sup> Norman eventually stopped, turned towards officers, raised his fists, "took a fighting stance," and advanced towards an officer.<sup>225</sup> In response, officers tased Norman, swept his legs, and took him into custody.<sup>226</sup> "During questioning, Norman would start talking about other things and go off on a tangent. . . . Norman said he did not remember why police tased him."<sup>227</sup>

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209. *Id.*

210. *Id.* at 3.

211. Criminal Complaint, at 1, *State v. Bailon*, T-4-CR-2020-626 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 25, 2020).

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. Criminal Complaint, at 1, *State v. Waites*, T-4-CR-2020-1797 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 7, 2020).

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

Norman was booked for assault on a police officer, resisting arrest, and indecent exposure.<sup>228</sup>

Officers at the UNM Hospital requested the dispatch of additional officers to assist with a man already in custody.<sup>229</sup> As officers attempted to move Antonio from a gurney to a wheelchair, Antonio spit in an officer's face.<sup>230</sup> Medical staff then sedated Antonio.<sup>231</sup> Antonio was arrested for aggravated battery against a police officer and assault against a police officer.<sup>232</sup> Antonio ended up spending 347 days in jail as he awaited his sentence for battering an officer with spit.<sup>233</sup>

An officer "working chief's overtime at the Apple Store" observed Jace reenter the store after having already been escorted out an hour earlier.<sup>234</sup> When confronted, Jace reported that he had returned to retrieve his credit card.<sup>235</sup> Knowing that Jace was lying, the officer warned him that if he did not leave the store, he would be arrested and taken to jail.<sup>236</sup> "Jace became belligerent and finally began walking towards the exit."<sup>237</sup> As he passed the officer, Jace grabbed the criminal trespass notification from his hand and ripped it apart.<sup>238</sup> In response, the officer reached for his left wrist to take him into custody.<sup>239</sup> Jace pulled away and pushed the officer.<sup>240</sup> Nonetheless, the officer succeeded in grabbing hold of Jace's left wrist while the loss prevention officers grabbed hold of his right arm.<sup>241</sup> Jace continued to resist arrest and to try and get free from their holds.<sup>242</sup> The officer told the loss prevention officers "to place Jace on the floor, face down."<sup>243</sup> With their assistance, the officer was finally able to handcuff Jace, escort him out of the store, and book him for criminal trespass and battery on a law enforcement officer.<sup>244</sup>

A passerby phoned police to report seeing an individual in their early twenties with long hair and wearing a blue jacket hit a business window with a cinder block.<sup>245</sup> Upon arrival, the officer observed items being thrown from inside the

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228. *Id.*

229. See Criminal Complaint, at 1, *State v. Sanchez*, T-4-FR-2020-3768 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 14, 2020).

230. *Id.*

231. *Id.*

232. *Id.*

233. See Guilty Plea Judgment, at 6, *State v. Sanchez*, D-202-CR-2020-1909 (N.M. 2<sup>nd</sup> Judicial Dist., Apr. 29, 2021).

234. See Criminal Complaint, at 1, *State v. Bobelu*, T-4-FR-2020-001003 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 22, 2020).

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. See Criminal Complaint, at 1, *State v. Wilson*, T-4-FR-2020-1819 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 12, 2020).

business through the broken window.<sup>246</sup> Soon after, Nesbah exited the business through the same broken window.<sup>247</sup> Officers asked Nesbah to show her hands.<sup>248</sup> Nesbah replied, “what? I have everything.”<sup>249</sup> In her defense, Nesbah claimed to have broken into the business to retrieve her business license and asserted that she used to work there, none of which was true.<sup>250</sup> Nesbah was arrested and transported to a police substation.<sup>251</sup> While in her holding cell, Nesbah struck an officer in his genitals.<sup>252</sup> In response, the officer pushed her, causing “her to strike her head against the wall.”<sup>253</sup> Nesbah was booked for burglary and aggravated battery on a peace officer.<sup>254</sup> The state filed a petition to detain Nesbah pre-trial.<sup>255</sup> The court granted their petition.<sup>256</sup> Consequently, Nesbah spent the next ten months in jail.<sup>257</sup> Then, Nesbah was committed to the New Mexico Behavioral Health Institute in Las Vegas “for treatment to attain competency to stand trial.”<sup>258</sup> Finally, on September 17, 2021, Nesbah’s case was dismissed due to her incompetence.<sup>259</sup>

### iii. *Larceny/Shoplifting*

Private security at a Walgreens flagged down an officer to assist him with a shoplifter.<sup>260</sup> The officer cuffed Angelo and placed him in the back seat of his patrol car.<sup>261</sup> A second officer arrived and began to transfer Angelo to his patrol car.<sup>262</sup> En route, Angelo “freely admitted without questioning, that he had stolen the cereal, milk, and oatmeal from Walgreens[] because he was hungry.”<sup>263</sup> Angelo was summoned for shoplifting.<sup>264</sup>

A Walmart loss prevention associate notified a chief’s overtime officer that Karen had received meats and baby items from a man in an electric scooter, placed

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246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. Register of Actions, *State v. Wilson*, D-202-LR-2020-401 (N.M. 2<sup>nd</sup> Judicial Dist. Ct., Apr. 30, 2020).

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. Criminal Complaint, *State v. Cordero*, T-4-CR-2020-19 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 2, 2020).

261. *Id.*

262. *See id.*

263. *Id.*

264. *Id.*

them in a Walmart recyclable shopping bag, and exited the store without paying for them.<sup>265</sup> Karen was summoned for shoplifting.<sup>266</sup>

A Home Depot loss prevention officer flagged down a chief's overtime officer to report that Brianna had placed razor blades and levels into her purse, entered the bathroom, changed into a different shirt, exited the bathroom, and walked out of the store.<sup>267</sup> When confronted, Brianna explained "she was shoplifting because she was homeless."<sup>268</sup> Brianna was summoned for shoplifting.<sup>269</sup>

A chief's overtime officer confronted Jack for stealing three cans of beer from a Walmart.<sup>270</sup> The officer asked Jack if he had stolen the beer, and Jack responded, "yes," but that he was not a bad person.<sup>271</sup> Jack was summoned for criminal trespass and shoplifting.<sup>272</sup>

While staffing the Walmart security office, an asset protection officer alerted a chief's overtime officer that Daniel had concealed a tent down the front of his pants.<sup>273</sup> Daniel "seemed to be under the influence of a narcotic. He was talking to himself and claimed his mother owned the store, and this is why he was able to leave the business without paying."<sup>274</sup> Daniel was summoned for shoplifting.<sup>275</sup>

A Walmart asset protection officer informed a chief's overtime officer that Stephanie had placed soap, breakfast cereal, plastic spoons, and juice into a rolling travel bag and exited the store without paying for the items.<sup>276</sup> Stephanie was booked for shoplifting and multiple warrants.<sup>277</sup>

911 dispatchers sent an officer to Lovelace Hospital in reference to stolen property.<sup>278</sup> Brendan had entered the doctor's lounge (a "badged access" area), selected food, and then attempted to leave the lounge with the food.<sup>279</sup> Brendan was summoned for trespass and petty larceny.<sup>280</sup>

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265. Criminal Complaint, *State v. Foley*, T-4-CR-2020-48 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 2, 2020).

266. *Id.*

267. Criminal Complaint, *State v. Burke*, T-4-CR-2020-3272 (N.M. Bernalillo Cnty. Metro. Ct., May 27, 2020).

268. *Id.*

269. *Id.*

270. Criminal Complaint, *Sierota 1929*, *supra* note 70.

271. *Id.*

272. *Id.*

273. Criminal Complaint, *State v. Muniz*, T-4-CR-2020-2185 (N.M. Bernalillo Cnty. Metro. Ct. Mar. 26, 2020).

274. *Id.*

275. *Id.*

276. See Criminal Complaint, *State v. Martinez*, T-4-CR-2020-2223 (N.M. Bernalillo Cnty. Metro. Ct. Mar. 30, 2020).

277. *Id.*

278. See Criminal Complaint, *State v. Northern*, T-4-CR-2020-90 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 6, 2020).

279. *Id.*

280. *Id.*



Jamie was seized by a Walmart loss prevention officer after passing all points of sale with unpaid clothing.<sup>281</sup> Jamie told officers “he took the clothes so that he could keep warm while living on the streets.”<sup>282</sup> Jamie was summoned for shoplifting.<sup>283</sup>

*iv. Disorderly Conduct/Indecent Exposure*

911 dispatchers sent an officer to APD’s Triangle Substation in reference to a “down and out” call.<sup>284</sup> Frank “was sitting on the curb holding onto his cane and highly intoxicated.”<sup>285</sup> Officers notified Frank that if he could get up, he would be allowed to leave.<sup>286</sup> Frank invited the officers to “shut the fuck up and to just shot [sic] him.”<sup>287</sup> Nearby pedestrians heard what Frank said.<sup>288</sup> The officers called Albuquerque Fire Rescue (“AFR”) to assist with Frank.<sup>289</sup> Frank was summoned for disorderly conduct and transported to a hospital.<sup>290</sup>

Walmart security phoned police concerning a woman yelling about coffee and “throwing herself around.”<sup>291</sup> Dawn had been denied service at the McDonald’s, entered the restroom, and begun kicking the door and yelling “officer is down.”<sup>292</sup> The officers observed Dawn walking through the store, “yelling and tossing around a stuffed animal.”<sup>293</sup> The officers then asked her to leave the property.<sup>294</sup> Dawn responded by “yelling expletives and walking around erratically.”<sup>295</sup> As the officer prepared a criminal trespass notification for her, Dawn sat down outside against the building.<sup>296</sup> When the officer presented it to her, she laid down and continued yelling.<sup>297</sup> Both private and public officers walked away from Dawn and hoped she would calm down and leave.<sup>298</sup> Instead, Dawn remained at the Walmart and continued to yell and flail.<sup>299</sup> Consequently, she was booked for disorderly conduct and criminal trespass.<sup>300</sup>

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281. Criminal Complaint, *State v. Lugo*, T-4-CR-2020-6537 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 23, 2020).

282. *Id.*

283. *Id.*

284. Criminal Complaint, *State v. Willard*, T-4-CR-2020-680 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 24, 2020).

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. Criminal Complaint, *State v. Wellington*, T-4-CR-2020-811 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 3, 2020).

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

A bike patrol officer dropped into a Quick Track to check in with staff and observed Gerald, “a known transient,” enter the store.<sup>301</sup> “Staff told Gerald he was not welcome in the store and had to leave.”<sup>302</sup> Gerald refused.<sup>303</sup> The officer warned Gerald if he did not leave, he would be arrested.<sup>304</sup> Gerald walked away, cursed at and flipped off the officer, and spat multiple times on the sidewalk in front of an ART Bus Stop.<sup>305</sup> In fact, Gerald was “causing such a scene” that traffic driving on Central Avenue began to back up.<sup>306</sup> Gerald was summoned for criminal trespass, disorderly conduct, and “conduct offensive to public well-being,” later recognized by the court as a non-existent statutory crime.<sup>307</sup>

An onlooker reported to the police that two people were “under a blanket performing sexual acts” at Robinson Park.<sup>308</sup> The investigating officer discovered “Christina grinding her pelvis against Michael’s pelvis and bouncing her upper body up and down in a rhythmic motion.”<sup>309</sup> Christina admitted she was “unclothed from the waist down.”<sup>310</sup> Michael was forced “to manipulate something briefly prior to pulling up his pants.”<sup>311</sup> The officer ordered Michael out of the sleeping bag and detained him in handcuffs for “passively resisting a directive to sit down with his legs crossed in front of him.”<sup>312</sup> Michael and Christina were summoned for public indecency.<sup>313</sup>

“Allen generated multiple calls for service in the Valley area command.”<sup>314</sup> Allen was seen jumping around wearing shorts and a diaper on his head, pulling up a parking stop, slamming a piece of wood against his vehicle, and causing damage to city signs and other vehicles.<sup>315</sup> Allen was summoned for disorderly conduct.<sup>316</sup>

The owner of a local restaurant called police and reported that Thomas’s loud behavior and indecent exposure had caused multiple customers to leave his restaurant.<sup>317</sup> When officers arrived, Thomas was “jumping in the street[] and yelling

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301. Criminal Complaint, *State v. Sanchez*, T-4-CR-2020-2885 (N.M. Bernalillo Cnty. Metro. Ct., May 7, 2020).

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. Criminal Complaint, *State v. Sanchez*, T-4-CR-2020-4120 (N.M. Bernalillo Cnty. Metro. Ct., July 17, 2020).

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. Criminal Complaint, *State v. Crosby*, T-4-CR-2020-4463 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 9, 2020).

315. *Id.*

316. *Id.*

317. Criminal Complaint, *State v. Reyes*, T-4-CR-2020-5344 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 20, 2020).

at himself.”<sup>318</sup> Officers instructed Thomas to sit down.<sup>319</sup> Thomas initially complied but then stood up, fled on foot down the street, stopped in an open field, began yelling, then resumed running down the street.<sup>320</sup> A nearby family witnessed Thomas’s actions and felt threatened and afraid.<sup>321</sup> Thomas was booked for disorderly conduct, indecent exposure, resisting arrest, and concealing his identity.<sup>322</sup>

Employees at the Double Tree Hotel called the police when Lacosta, who had already received a criminal trespass notification, returned to the hotel and “was walking in and out of traffic naked with a blanket.”<sup>323</sup> Lacosta explained to the dispatched officer that she was Jesus, pregnant with six babies, staying at the hotel, and on methamphetamines.<sup>324</sup> The officer transported Lacosta to a hospital and summoned her for criminal trespass and indecent exposure.<sup>325</sup>

A patrol officer at Los Altos Park observed Milan pull down her pants, “expose her vagina and bottom,” and urinate in clear view of himself, others at the park, and persons at a nearby restaurant.<sup>326</sup> The officer recalled having issued numerous prior verbal warnings to Milan for trespassing, erecting tents, and camping in the area.<sup>327</sup> Consequently, he booked her for indecent exposure and unlawful urinating.<sup>328</sup>

A patrol officer observed Adrian jaywalking near a northeast intersection.<sup>329</sup> The officer approached Adrian outside a Speedway gas station and informed him that he was under arrest and not free to leave.<sup>330</sup> Adrian began to yell that he had to “take a shit” and ignored the officer’s instructions to turn around.<sup>331</sup> Adrian then pulled down his pants, rushed over to a bush, and “proceeded to defecate.”<sup>332</sup> When Adrian was done, the officer patted him down and notified him that he would be summoned for jaywalking, eluding arrest, and indecent exposure.<sup>333</sup>

#### v. *Battery*

Emergency dispatchers sent an officer to a Target in reference to a shoplifter dressed in black who had punched a security worker.<sup>334</sup> Upon arrival, officers

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318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

323. Criminal Complaint, *Emerson* 5637, *supra* note 86.

324. *Id.*

325. *Id.*

326. Criminal Complaint, *State v. Quintana*, T-4-CR-2020-3396 (N.M. Bernalillo Cnty. Metro. Ct., June 9, 2020).

327. *Id.*

328. *Id.*

329. Criminal Complaint, *State v. McKellar*, T-4-CR-2020-4756 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 21, 2020).

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.*

334. Criminal Complaint, *Romero* 320, *supra* note 36.

observed Michael sleeping in some nearby bushes.<sup>335</sup> Michael had stolen a bottle of liquor, and when a security worker grabbed his arm and ordered him to stop, Michael elbowed her in the chest and fled the scene.<sup>336</sup> Michael was summoned for battery and shoplifting.<sup>337</sup>

An employee of Albuquerque Health Care for the Homeless (“AHCH”) phoned the police for assistance in removing Matthew (“deaf” and “mute”) from the property.<sup>338</sup> An employee asked Matthew to leave after witnessing him in a fistfight with another client.<sup>339</sup> Matthew walked across the street, sat next to his cart, returned to AHCH, punched an employee who was handing out bus passes, picked up a metal pipe, and began swinging it “in the direction of people who were standing outside.”<sup>340</sup> Officers searched but were unable to locate Matthew. Matthew was summoned for battery.<sup>341</sup>

Private security at a local restaurant notified police that Lyle was highly intoxicated and causing a disturbance.<sup>342</sup> Further, when they attempted to usher him out of the restaurant, he punched one of them in the shoulder “in front of multiple customers near the entrance.”<sup>343</sup> When the police arrived, Lyle was sitting in an alley south of the restaurant.<sup>344</sup> Private security asked that Lyle be issued a criminal trespass notification and insisted on pressing charges.<sup>345</sup> Lyle was summoned for battery and disorderly conduct.<sup>346</sup>

911 dispatchers sent an officer to a Subway restaurant in reference to an aggressive loiterer.<sup>347</sup> Tania and an unidentified male had been at the Subway for a couple of hours.<sup>348</sup> The security guard informed them that the restaurant was closing soon, and it was time for them to leave.<sup>349</sup> According to the guard, Tania became upset, yelled at him, and spat in his face.<sup>350</sup> Tania claimed that “she had accidentally spit on him while she was talking.”<sup>351</sup> The guard maced Tania and pinned her down until the unidentified male approached with what the guard believed was a “sharp

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335. *Id.*

336. *Id.*

337. *Id.*

338. Criminal Complaint, *State v. Colberg*, T-4-CR-2020-803 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 30, 2020).

339. *Id.*

340. *Id.*

341. *Id.*

342. Criminal Complaint, *State v. Adeky*, T-4-CR-2020-1274 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 18, 2020).

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. Criminal Complaint, *State v. Stanford*, T-4-CR-2020-1927 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 11, 2020).

348. *Id.*

349. *Id.*

350. *Id.*

351. *Id.*

object.”<sup>352</sup> Officers located Tania at a Taco Bell, “washing her face and panicking.”<sup>353</sup> Tania was summoned for battery.<sup>354</sup>

Employees of a Family Dollar store phoned 911 in reference to an ongoing fight between Anna, a store employee, and a woman who refused to wear a mask.<sup>355</sup> Anna notified Alyssa that she had to wear a mask.<sup>356</sup> Alyssa yelled insults, continued walking into the store, attempted to swing at Anna, started a shoving match, and caused Anna to fall to the ground.<sup>357</sup> Alyssa told officers that she hit Anna because she, Alyssa, is crazy, wants to kill herself, and needs her medication.<sup>358</sup> Alyssa was transported to a hospital and summoned for battery.<sup>359</sup>

#### vi. *Possession of Controlled Substances*

A patrol officer at Los Altos Park observed Robert sitting in the grass with a hypodermic needle in his hand.<sup>360</sup> On the ground in front of Robert was a soda can “fashioned into a small bowl” with a “black tarry substance inside.”<sup>361</sup> The officer asked Robert what he was doing.<sup>362</sup> Robert responded that he had just woken up.<sup>363</sup> The officer asked if Robert had been shooting up drugs.<sup>364</sup> Robert replied, “no.”<sup>365</sup> Robert then stood up, said goodbye, and began to run away.<sup>366</sup> Robert ran approximately fifteen feet from the officer, turned back, and “raised his right arm above his head, wielding the uncapped syringe” in the officer’s direction.<sup>367</sup> Feeling threatened, the officer drew his weapon and ordered Robert to drop the syringe and get on the ground.<sup>368</sup> Robert complied and was booked for possession of a controlled substance.<sup>369</sup>

Dispatch sent officers to check on a family reportedly camping at Jerry Cline Park.<sup>370</sup> Officers found Andrew, his wife, and their two small children lying

352. *Id.*

353. *Id.*

354. *Id.*

355. Criminal Complaint, *State v. Day*, T-4-CR-2020-4144 (N.M. Bernalillo Cnty. Metro. Ct., July 17, 2020).

356. *Id.*

357. *Id.*

358. *Id.*

359. *Id.*

360. Criminal Complaint, *State v. Davis*, T-4-FR-2020-2502 (N.M. Bernalillo Cnty. Metro. Ct., May 28, 2020).

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.*

365. *Id.*

366. *Id.*

367. *Id.*

368. *Id.*

369. *Id.*

370. Criminal Complaint, *State v. Estrada*, T-4-FR-2020-2025 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 28, 2020) [hereinafter Criminal Complaint, *Estrada* 2025]; *State v. Estrada*, T-4-TR-2019-011552 (N.M. Bernalillo Cnty. Metro. Ct., June 20, 2019)[hereinafter *Estrada* 011552].

on a blanket together.<sup>371</sup> Officers arrested Andrew for an outstanding misdemeanor warrant.<sup>372</sup> As officers searched Andrew, he informed them that he was in possession of a small quantity of methamphetamine.<sup>373</sup> Andrew was booked for possession of a controlled substance.<sup>374</sup>

A patrol officer observed Jaguar cross two streets “in an area other than a crosswalk.”<sup>375</sup> The officer stopped Jaguar and “advised him of the dangers of jaywalking.”<sup>376</sup> Jaguar had an outstanding misdemeanor warrant and was arrested.<sup>377</sup> When the officer performed a search incident to arrest, he found a clear glass pipe and a “clear rock like substance.”<sup>378</sup> Jaguar was booked for possession of a controlled substance and drug paraphernalia.<sup>379</sup>

A patrol officer observed two females sitting next to multiple shopping carts blocking a bike lane and sidewalk.<sup>380</sup> Officers arrested Dorma after they confirmed she had two active warrants for criminal trespassing.<sup>381</sup> Officers then offered to “transport her to the bonding window where she could pay the bonds and eliminate the warrants . . . [but] if she could not pay the bonds, she would be . . . booked for the warrants.”<sup>382</sup> During the search incident to arrest, officers found “a few shards of a white crystal-like substance in the right front watch pocket of her pants.”<sup>383</sup> Dorma was informed that officers had no choice but to book her.<sup>384</sup>

A patrol officer observed Eric riding his bicycle at night without lights.<sup>385</sup> The officer stopped Eric and patted him down.<sup>386</sup> When the officer discovered there was an outstanding felony warrant for Eric’s arrest, he handcuffed Eric and searched him incident to arrest.<sup>387</sup> The officer found a glass pipe, hypodermic needles, and heroin.<sup>388</sup> Eric was booked for possession of a controlled substance and drug paraphernalia.<sup>389</sup>

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371. Criminal Complaint, *Estrada 2025*, *supra* note 370; *Estrada 011552*, *supra* note 370.

372. Criminal Complaint, *Estrada 2025*, *supra* note 370; *Estrada 011552*, *supra* note 370.

373. Criminal Complaint, *Estrada 2025*, *supra* note 370; *Estrada 011552*, *supra* note 370.

374. Criminal Complaint, *Estrada 2025*, *supra* note 370; *Estrada 011552*, *supra* note 370.

375. Criminal Complaint, *State v. Fresquez*, T-4-FR-2020-3223 (N.M. Bernalillo Cnty. Metro. Ct., July 15, 2019).

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

380. Criminal Complaint, *State v. Smith*, T-4-FR-2020-3166 (N.M. Bernalillo Cnty. Metro. Ct., July 11, 2020)

381. *Id.*

382. *Id.*

383. *Id.*

384. *Id.*

385. Criminal Complaint, *State v. Willie*, T-4-FR-2020-2762 (N.M. Bernalillo Cnty. Metro. Ct., June 15, 2020).

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.*

A patrol officer observed Gerald and Jose walking in the middle of the street despite the availability of sidewalks on both sides of the road.<sup>390</sup> The officer detained both Gerald and Jose.<sup>391</sup> One officer “noticed a bulge in Jose’s right side and asked him what it was.”<sup>392</sup> Jose pulled out a bag of methamphetamine.<sup>393</sup> Officers placed Jose in the back of their patrol car and searched his backpack, where they found a loaded syringe.<sup>394</sup> “Jose stated that he is going through a hard time because of homelessness and the recent passing of his brother.”<sup>395</sup> Jose was booked with possession of a controlled substance and unlawful walking on a roadway.<sup>396</sup>

Patrol officers observed Michael loitering behind a Baby’s R Us.<sup>397</sup> When Michael saw the police, he attempted to hide behind a large electrical box.<sup>398</sup> Officers approached Michael and asked him to stand up and come out.<sup>399</sup> As he did, Michael “began to target glance.”<sup>400</sup> When the officer asked Michael to sit down, Michael took off running.<sup>401</sup> Officers pursued Michael into the Amberly Suites Hotel, ordering him multiple times to stop.<sup>402</sup> Michael then fled to a nearby Office Max, where he momentarily hid behind a dumpster before running through the parking lot.<sup>403</sup> The officers finally captured Michael.<sup>404</sup> When they took him to the ground, they observed a syringe loaded with heroin as it fell to the ground.<sup>405</sup> Michael then asked a “dumb question”—whether he could finish consuming his heroin before being taken to jail.<sup>406</sup> A search of Michael’s bags found more syringes, as well as heroin and methamphetamines.<sup>407</sup> Michael was booked for possession of controlled substances and drug paraphernalia, criminal trespass, and resisting arrest.<sup>408</sup>

## B. Defendant Profiles

### *i. Candice*

Candice was arrested four times in 2020. On July 26, Candice’s grandmother phoned the police and reported that she had climbed through the

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390. Criminal Complaint, *State v. Valenzuela-Ruiz*, T-4-FR-2020-5712 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 6, 2020).

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.*

395. *Id.*

396. *Id.*

397. Criminal Complaint, *State v. Jojola*, T-4-FR-2020-002912 (N.M. Bernalillo Cnty. Metro. Ct., June 24, 2020).

398. *Id.*

399. *Id.*

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.*

408. *Id.*

window of her house and was hitting the walls with a hammer.<sup>409</sup> Candice had previously lived in the residence and still had some personal belongings there.<sup>410</sup> According to officers, Candice had used methamphetamines and was incoherent, talking about “dead things” in the walls and floors.<sup>411</sup> As the officers were speaking with Candice, she began to walk away across the front yard.<sup>412</sup> At one point, she turned towards them, clenched her fists, turned away, and continued walking.<sup>413</sup> The officers then grabbed Candice and cuffed her.<sup>414</sup> Candice was booked for breaking and entering, criminal damage to property, resisting arrest, and possession of drug paraphernalia.<sup>415</sup>

On August 14, a neighbor reported that Candice was dancing and crawling down her grandmother’s street.<sup>416</sup> Officers told Candice that they were worried about her and that they were there to check up on her.<sup>417</sup> Candice threatened to kill herself and the officers.<sup>418</sup> Worried that Candice might be armed, officers grabbed hold of her.<sup>419</sup> Candice scratched one officer and attempted to bite others.<sup>420</sup> Candice was booked for battering a peace officer and resisting arrest.<sup>421</sup>

On August 27, the manager of a Howard Johnson Motel called for assistance in removing Candice from the motel.<sup>422</sup> Candice had been hanging out at the motel for a week.<sup>423</sup> Each time the police were called, she would leave but return shortly afterward.<sup>424</sup> The manager reported that Candice had thrown a “metal hook” at him and that it had struck him in the face.<sup>425</sup> Officers notified Candice that she would be issued several citations.<sup>426</sup> Candice laughed.<sup>427</sup> Candice was booked for battery, criminal trespass, concealing her identity, and a felony warrant.<sup>428</sup>

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409. Criminal Complaint, *State v. Anzures*, T-4-FR-2020-3413 (N.M. Bernalillo Cnty. Metro. Ct., July 26, 2020).

410. *Id.*

411. *Id.*

412. *See id.*

413. *See id.*

414. *See id.*

415. *See id.*

416. *See* Criminal Complaint, *State v. Anzures*, T-4-FR-2020-3777 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 15, 2020).

417. *See id.*

418. *See id.*

419. *See id.*

420. *See id.*

421. *See id.*

422. *See* Criminal Complaint, *State v. Anzures*, T-4-CR-2020-4853 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 27, 2020).

423. *See id.*

424. *See id.*

425. *See id.*

426. *See id.*

427. *See id.*

428. *See id.*



Finally, on September 21, 911 dispatchers sent officers to the Imperial Hotel in reference to a vandalism call.<sup>429</sup> Candice had broken into a hotel room and refused to leave.<sup>430</sup> Candice said she was staying in another room with a friend and had “come into this room to dry her bra.”<sup>431</sup> When the officer asked for her name, Candice invited him to “suck her dick” and accused him of “tasing her in the head” and scanning her with a biometric scanner located in his on-body recording device.<sup>432</sup> The officer then cuffed Candice, placed her in his patrol car, searched her belongings, and found a syringe and other drug paraphernalia.<sup>433</sup> Candice explained that the syringe was to “remind her not to shoot up, as she had been trying not to.”<sup>434</sup> Candice was booked for criminal trespass, outstanding warrants, and possession of drug paraphernalia.<sup>435</sup>

On October 25, 2021, Candice was sentenced to 182 days of incarceration and one year of supervised probation for her resistance to being arrested on August 14.<sup>436</sup> She was given credit for the 92 days she had already served pre-sentence.<sup>437</sup>

*ii. Dwayne*

Dwayne was arrested four times in 2020. On March 23, neighbors called police, concerned that Dwayne had entered a vacant residence without permission.<sup>438</sup> When the officer arrived, he spoke with a Fannie Mae employee who reported that he frequently finds people squatting inside the residence.<sup>439</sup> The officer then spoke with Dwayne, who was inside the residence.<sup>440</sup> Dwayne declared himself a squatter and explained that he saw that the building was substandard and that he had assumed the responsibility of cleaning it up.<sup>441</sup> The officer advised Dwayne that he was not allowed to be there and would be summoned for criminal trespass.<sup>442</sup>

On May 1, a patrol officer “observed a black Honda CRV traveling westbound on Zuni Road.”<sup>443</sup> The officer got behind the vehicle.<sup>444</sup> The vehicle quickly turned northbound on Kentucky Street.<sup>445</sup> A check of the license plate

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429. See Criminal Complaint, *State v. Anzures*, T-4-CR-2020-5372 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 22, 2020).

430. See *id.*

431. *Id.*

432. *Id.*

433. See *id.*

434. *Id.*

435. See *id.*

436. See Amended Judgment and Sentence, at 4, *State v. Anzures*, D-202-CR-2020-2094 (N.M. 2<sup>nd</sup> Judicial Dist. Ct., Oct. 14, 2020).

437. See *id.* at 4, 6.

438. See Criminal Complaint, *Burwell* 2352, *supra* note 51.

439. See *id.*

440. See *id.*

441. See *id.*

442. See *id.*

443. Criminal Complaint, *State v. Burwell*, T-4-FR-2020-2077 (N.M. Bernalillo Cnty. Metro. Ct., May 1, 2020).

444. See *id.*

445. See *id.*

revealed that the car was stolen.<sup>446</sup> Dwayne turned westbound on Acoma Road and quickly accelerated.<sup>447</sup> He then turned off his headlights and turned northbound on Indiana Street and then westbound on Cochiti Road before pulling into a mobile home park.<sup>448</sup> The officer engaged his emergency equipment and gave verbal commands to exit the vehicle. Dwayne exited the vehicle and was handcuffed.<sup>449</sup> Dwayne explained that he did not know the vehicle was stolen, that he had received it from a friend, and that he fled because he had been shot at four times in the past month.<sup>450</sup> The officer believed that Dwayne could not have possibly feared being shot at because the pursuing vehicle was clearly a law enforcement vehicle.<sup>451</sup> Dwayne was booked for auto theft.<sup>452</sup>

On August 5, 911 dispatchers sent an officer to a 7-Eleven in reference to an aggravated battery call.<sup>453</sup> The caller reported that she and Dwayne “were arguing over their property that they shared inside a shopping cart.”<sup>454</sup> During the argument, Dwayne threw a can of iced tea that hit her in the face.<sup>455</sup> Dwayne reported that he and Michelle had been “walking the streets together for years” and that Michelle was injured while fighting with someone else.<sup>456</sup> Dwayne was summoned for aggravated battery.<sup>457</sup>

On September 25, a patrol officer witnessed Dwayne trespassing at a closed-down Village Inn restaurant.<sup>458</sup> The property “had numerous issues with drug abuse activities and vandalism.”<sup>459</sup> The officer detained Dwayne and arrested him for multiple warrants.<sup>460</sup> During a search incident to arrest, the officer “located a piece of brown paper bag twisted into a ball” which contained methamphetamines.<sup>461</sup> Dwayne was booked for possession of a controlled substance and multiple warrants.<sup>462</sup>

In total, Dwayne was booked into the MDC five times as a result of his 2020 arrests.<sup>463</sup>

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446. *See id.*

447. *See id.*

448. *See id.*

449. *See id.*

450. *See id.*

451. *See id.*

452. *See id.*

453. *See* Criminal Complaint, *State v. Burwell*, T-4-CR-2020-4634 (N.M. Bernalillo Cnty. Metro. Ct., Aug. 14, 2020).

454. *Id.*

455. *See id.*

456. *Id.*

457. *See id.*

458. *See* Criminal Complaint, *State v. Burwell*, T-4-FR-2020-4571 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 25, 2020).

459. *Id.*

460. *See id.*

461. *Id.*

462. *See id.*

463. This number was calculated from the number of booking IDs reported in Burwell’s 2020 case files.

*iii. Tony*

Tony was arrested five times in 2020. On February 7, Albuquerque's Public Outreach Coordinator located several people camping on New Mexico DOT property near Heart Hospital.<sup>464</sup> The Outreach Coordinator informed Tony that he had to pack up his camp and leave.<sup>465</sup> Officers who were assisting the Outreach Coordinator discovered that Tony had two outstanding warrants and notified him that he was under arrest.<sup>466</sup> Tony fled, jumped over a large fence, and ran down a hill. Officers pursued Tony.<sup>467</sup> Tony ran across hospital property, jumped over another fence, and entered an apartment complex.<sup>468</sup> Officers then set up a perimeter around the complex and attempted to locate Tony with air support but failed.<sup>469</sup> Tony was summoned for evading arrest.<sup>470</sup>

On February 12, a patrol officer "observed three men sitting on the sidewalk obstructing movement."<sup>471</sup> The officer mistook Tony for Robert, a man wanted on multiple felony warrants.<sup>472</sup> As the officer exited his patrol car, Tony fled through streets and alleyways and finally ran into a residential property.<sup>473</sup> APD's SWAT and K-9 units were mobilized to capture Tony.<sup>474</sup> Ultimately, K-9 officers located Tony hiding in the back of a shed.<sup>475</sup> Tony was booked for two misdemeanor warrants, as well as for obstructing movement, jaywalking, resisting arrest, and concealing identity.<sup>476</sup>

On February 15, Tony was summoned for criminal trespass when two bike patrol officers observed him and three other people sitting on an embankment under Interstate 25.<sup>477</sup> One month later, a bike patrol officer riding around the Acequia Madre Crossing Park observed Tony and Santiago sitting near some hypodermic needles, plastic bags, rubber ties, and a plastic container filled with small bags of methamphetamines.<sup>478</sup> Tony was cuffed and patted down.<sup>479</sup> Officers found a glass pipe in Tony's front pocket.<sup>480</sup> Tony was booked for possession of a controlled substance and drug paraphernalia.<sup>481</sup>

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464. Criminal Complaint, *Nelson* 1261, *supra* note 19.

465. *Id.*

466. *Id.*

467. *See id.*

468. *Id.*

469. *Id.*

470. *Id.*

471. Criminal Complaint, *State v. Nelson*, T-4-CR-2020-1113 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 12, 2020).

472. *Id.*

473. *See id.*

474. *Id.*

475. *Id.*

476. *Id.*

477. Criminal Complaint, *State v. Nelson*, T-4-CR-2020-1702 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 3, 2020).

478. Criminal Complaint, *State v. Nelson*, T-4-FR-2020-1381 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 13, 2020).

479. *Id.*

480. *Id.*

481. *Id.*

On May 14, bike patrol officers observed Tony ride his bicycle through a red light.<sup>482</sup> The officer asked Tony to stop.<sup>483</sup> Tony kept on riding, then got off his bike, ran, and jumped over a fence.<sup>484</sup> The officer pulled out his taser and notified Tony if he did not stop, he would be tased.<sup>485</sup> Tony stopped and was booked for a misdemeanor warrant, as well as for failing to obey a traffic signal and evading an officer.<sup>486</sup>

*iv. Amanda*

Amanda was arrested five times in 2020. On February 12, 911 dispatchers sent an officer to the Herman Sanchez Community Center in reference to a disturbance call.<sup>487</sup> The caller stated that Amanda was at the community center, despite having previously been issued a criminal trespass notification.<sup>488</sup> When the officer arrived, Amanda was in the bathroom “taking care of an open infected sore on her arm.”<sup>489</sup> When the officer asked why she was at the community center, knowing that she was not permitted to be there, Amanda responded “that it was her neighborhood and she should be able to use the center.”<sup>490</sup> Amanda was taken to the hospital for treatment and summoned for trespass.<sup>491</sup>

On June 20, an officer arrived at an apartment complex in response to a request for assistance from Albuquerque Fire Rescue.<sup>492</sup> “Concerned citizens on scene” reported that Amanda had slept on the property the previous night and had been shooting up drugs in the vicinity of children.<sup>493</sup> The officer arrested Amanda when he learned there was an outstanding misdemeanor warrant for her arrest.<sup>494</sup> Amanda possessed an uncapped syringe and bloody rags.<sup>495</sup> Amanda was summoned for possession of drug paraphernalia.<sup>496</sup>

On September 16, an employee at a Valero gas station reported that a “Hispanic female in her 30s wearing a black muscle shirt with grey sweats” had just attempted to purchase some food items using a counterfeit \$100 bill.<sup>497</sup> He added that when he confronted Amanda about the bill being fake, she threatened to shoot

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482. Criminal Complaint, *State v. Nelson*, T-4-CR-2020-2986 (N.M. Bernalillo Cnty. Metro. Ct., May 14, 2020).

483. *Id.*

484. *Id.*

485. *Id.*

486. *Id.*

487. Criminal Complaint, *State v. Moya*, T-4-CR-2020-1435 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 21, 2020).

488. *Id.*

489. *Id.*

490. *Id.*

491. *Id.*

492. Criminal Complaint, *State v. Moya*, T-4-CR-2020-3798 (N.M. Bernalillo Cnty. Metro. Ct., June 26, 2020).

493. *Id.*

494. *Id.*

495. *See id.*

496. *Id.*

497. Criminal Complaint, *State v. Moya*, T-4-FR-2020-4391 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 16, 2020).

him.<sup>498</sup> Officers located Amanda walking away from the gas station and detained her.<sup>499</sup> Amanda told officers that she did not know the bill was fake.<sup>500</sup> After being advised of her rights, Amanda stated that she did not understand them and did not want to speak with officers.<sup>501</sup> Amanda was booked for forgery and an outstanding warrant.<sup>502</sup>

Eleven days later, an officer observed Amanda on a public street “with a needle in her arm,” a cut Coke can with heroin and paraphernalia inside it, and a “bulge in her pelvic area.”<sup>503</sup> A search incident to arrest turned up “multiple pieces of foil with a white crystal substance inside” and a “ball of brown sticky substance wrapped in plastic.”<sup>504</sup> When Amanda was asked if she understood her rights, she replied, “fuck you.”<sup>505</sup> Amanda was booked for possession of controlled substances and drug paraphernalia.<sup>506</sup>

On November 27, dispatch sent officers to Amanda’s mother-in-law’s home in reference to a disturbance call.<sup>507</sup> When officers arrived, Amanda’s father-in-law and mother-in-law were in a parked car down the street.<sup>508</sup> They complained that Amanda had been continuously coming onto the property without permission.<sup>509</sup> Officers found Amanda in the backyard holding a syringe loaded with heroin.<sup>510</sup> Amanda was booked for possession of a controlled substance and four felony warrants.<sup>511</sup>

In total, Amanda spent nearly one month housed at the MDC as the result of her arrests in 2020.<sup>512</sup>

v. *Myron*

Myron was arrested eight times in 2020. In March, a responding officer was informed that a “tall Black male pushing a shopping cart” was involved in starting a dumpster fire.<sup>513</sup> When officers located Myron, they ordered him to stop because he

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498. *Id.*

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.*

503. Criminal Complaint, *State v. Moya*, T-4-FR-2020-4603 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 27, 2020).

504. *Id.*

505. *Id.*

506. *Id.*

507. Criminal Complaint, *State v. Moya*, T-4-FR-2020-5564 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 27, 2020).

508. *Id.*

509. *Id.*

510. *Id.*

511. *Id.*

512. Amanda Moya’s booking history at Metropolitan Detention Center was obtained through a public record request to Bernalillo County, New Mexico, and is on file with the author.

513. Criminal Complaint, *State v. Myron*, T-4-CR-2020-1637 (N.M. Bernalillo Cnty. Metro. Ct., March 2, 2020).

was being investigated for arson.<sup>514</sup> Instead, Myron began to walk away.<sup>515</sup> Officers then used force to take him into custody and booked him for arson.<sup>516</sup> In April, Myron started several dumpster fires in an alley.<sup>517</sup> When officers caught up with him, he was walking down Central Avenue, yelling and screaming that he needed the FBI.<sup>518</sup> Myron was summoned for disorderly conduct and arson.<sup>519</sup>

On April 21, Myron started a “small fire by some bushes” in a parking lot after his request for help from a friary went unanswered “due to the virus.”<sup>520</sup> On May 5, patrol officers came across Myron sleeping on a sidewalk beside a “dumped out shopping cart,” blocking a lane of traffic.<sup>521</sup> When officers woke Myron, he began yelling delusional statements about a New Mexican politician.<sup>522</sup> Myron was summoned for littering, disorderly conduct, and obstructing movement.<sup>523</sup>

On May 24, a patrol officer located Myron on private property with multiple no-trespassing signs posted.<sup>524</sup> As soon as the officer made contact, Myron began walking away.<sup>525</sup> Myron then grabbed a large rock and held it over his head.<sup>526</sup> Fearing that he might be seriously injured or killed, the officer immediately drew his gun.<sup>527</sup> Myron lowered the rock and continued to walk away.<sup>528</sup> The officer holstered his gun and drew his taser.<sup>529</sup> When Myron reached the road, he dropped his pants, grabbed his penis, and yelled at the officer.<sup>530</sup> The officer reported that “a family in the area saw this and were so disturbed they immediately stopped and turned around fleeing the area.”<sup>531</sup> Myron eventually pulled up his pants, was caught by the officer, and placed in restraints.<sup>532</sup> Myron was booked for aggravated assault upon a peace officer, indecent exposure, and disorderly conduct.<sup>533</sup>

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514. *Id.*

515. *Id.*

516. *Id.*

517. Criminal Complaint, *State v. Gonzalez*, T-4-CR-2020-2854 (N.M. Bernalillo Cnty. Metro. Ct., May 7, 2020).

518. *Id.*

519. *Id.*

520. Criminal Complaint, *State v. Jenkins*, T-4-CR-2020-2940 (N.M. Bernalillo Cnty. Metro. Ct., May 12, 2020).

521. Criminal Complaint, *State v. Gonzales*, T-4-CR-2020-3101 (N.M. Bernalillo Cnty. Metro. Ct., May 21, 2020).

522. *Id.*

523. *Id.*

524. Criminal Complaint, *State v. Jenkins*, T-4-FR-2020-2444 (N.M. Bernalillo Cnty. Metro. Ct., May 24, 2020).

525. *Id.*

526. *Id.*

527. *Id.*

528. *Id.*

529. *Id.*

530. *Id.*

531. *Id.*

532. *Id.*

533. *Id.*

On June 13, a witness saw Myron outside the Highland Senior Center, wearing only black shorts and flip-flops.<sup>534</sup> The witness reported that Myron picked up a bowling ball sized rock, threw it through two glass doors, and entered the senior center.<sup>535</sup> By the time officers arrived, Myron was outside the center in the parking lot.<sup>536</sup> Myron was booked for breaking and entering and criminal damage to property.<sup>537</sup>

On September 26, Myron was found “sleeping in a tent erected in the landscaping of the parking lot of the Salvation Army.”<sup>538</sup> Officers determined that he “was not participating in lawful business on the property” and summoned him for criminal trespass.<sup>539</sup>

Finally, on November 15, restaurant patrons flagged down a couple patrol officers and reported that Myron was at a nearby bus stop exposing himself and being loud.<sup>540</sup> When officers contacted Myron, they immediately recognized him as a “known transient.”<sup>541</sup> Myron was yelling about a Nob Hill mural and claiming that Governor Michelle Lujan Grisham was a member of the Ku Klux Klan and out to get him.<sup>542</sup> When an officer attempted to detain Myron, he fled, tripped over a shopping cart, fell to the ground, became combative, and kicked an officer in the groin and chest, causing the officer “mild discomfort.”<sup>543</sup> Myron was booked for battery upon a peace officer, indecent exposure, disorderly conduct, and resisting arrest.<sup>544</sup>

Although all of Myron’s cases were dismissed due to his incompetence, Myron was housed at the MDC seven times in 2020, for a total of forty-three days, and spent over five months in pretrial detention in 2021 in connection with his 2020 felony arrests.<sup>545</sup>

#### vi. *Gabriel*

Gabriel was arrested eleven times in 2020. On January 17, an undercover officer was working a tactical plan at Albertsons to assist with in-store surveillance and identification of people shoplifting.<sup>546</sup> While inside the loss prevention office, the officer witnessed Gabriel conceal “an un-known item” into a small metal box and

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534. Criminal Complaint, *State v. Jenkins*, T-4-FR-2020-2735 (N.M. Bernalillo Cnty. Metro. Ct., June 13, 2020).

535. *Id.*

536. *Id.*

537. *Id.*

538. Criminal Complaint, *State v. Jenkins*, T-4-CR-2020-5666 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 6, 2020).

539. *Id.*

540. Criminal Complaint, *State v. Jenkins-Gonzales*, T-4-FR-2020-5393 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 15, 2020).

541. *Id.*

542. *Id.*

543. *Id.*

544. *Id.*

545. Myron Gonzales’s booking history at Metropolitan Detention Center was obtained through a public record request to Bernalillo County, New Mexico, and is on file with the author.

546. Criminal Complaint, *State v. Devolk*, T-4-CR-2020-0450 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 17, 2020).

a bottle or can inside his pants.<sup>547</sup> Gabriel exited the store without paying for anything.<sup>548</sup> A loss prevention employee introduced himself to Gabriel and asked him if he would step back inside the store.<sup>549</sup> When Gabriel attempted to push past him, the undercover officer grabbed hold of Gabriel and ordered him “to stop fighting us.”<sup>550</sup> Gabriel continued to try to pull loose, but he fell to the sidewalk.<sup>551</sup> The public and private officers held Gabriel on the ground until two additional employees assisted in handcuffing Gabriel.<sup>552</sup> The officers recovered a “Mikes Hard Lemonade and two (2) bic lighters.”<sup>553</sup> Gabriel was booked for criminal trespass, shoplifting, and resisting arrest.<sup>554</sup>

On January 20, Walmart notified an officer that Gabriel had concealed multiple items and left the store without paying.<sup>555</sup> The officer located Gabriel in Walmart’s parking lot, sat him down, and then patted him down “due to the fact he continued to place his hands in his pockets.”<sup>556</sup> As the officer stood Gabriel up, some of the stolen merchandise fell to the ground.<sup>557</sup> In addition, the officer located a video game inside Gabriel’s pants.<sup>558</sup> When Gabriel was placed inside the officer’s patrol car, Gabriel kicked the inside of the vehicle multiple times until the officer threatened to place Gabriel in “a passive restraint system.”<sup>559</sup> Gabriel was booked for shoplifting.<sup>560</sup>

On May 23, dispatch sent an officer to a Speedway Gas Station in regard to an “active criminal trespass.”<sup>561</sup> The officer ran into Gabriel, “a transient man,” walking through the parking lot.<sup>562</sup> The officer asked Gabriel why he kept returning to the Speedway.<sup>563</sup> Gabriel stated that he was trying to get money for a prescription of antibiotics.<sup>564</sup> Gabriel complained of being dizzy and in pain and requested to see a medic.<sup>565</sup> Gabriel “was transported to Women’s Lovelace Hospital” and summoned for criminal trespass.<sup>566</sup>

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547. *Id.*

548. *Id.*

549. *Id.*

550. *Id.*

551. *Id.*

552. *Id.*

553. *Id.*

554. *Id.*

555. Criminal Complaint, *State v. Devolk*, T-4-CR-2020-0472 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 20, 2020).

556. *Id.*

557. *Id.*

558. *Id.*

559. *Id.*

560. *Id.*

561. Criminal Complaint, *State v. Devolk*, T-4-CR-2020-3355 (N.M. Bernalillo Cnty. Metro. Ct., June 2, 2020).

562. *Id.*

563. *Id.*

564. *Id.*

565. *Id.*

566. *Id.*



On September 16, an officer was dispatched to a Circle K in reference to a “panhandler.”<sup>567</sup> Gabriel had entered the store, selected some merchandise, gone into the restroom, consumed the merchandise, and exited the store without paying.<sup>568</sup> When a store employee confronted Gabriel about the stolen merchandise, Gabriel attempted to hit him with a stick. Gabriel was summoned for assault, shoplifting, and criminal trespass.<sup>569</sup>

The remainder of Gabriel’s arrests were for repeatedly trespassing at a Circle K store<sup>570</sup> and shoplifting \$35, \$10, and \$16 worth of merchandise from Home Depot, Albertsons, and Speedway, respectively.<sup>571</sup>

As a result of these charges, Gabriel was booked into the MDC eight times.<sup>572</sup>

vii. *Loyola*

Loyola was arrested eleven times in 2020. On January 1, Loyola became combative with a nurse, kicked a security guard, and spat on another as she was being discharged from a hospital.<sup>573</sup> The hospital requested police assistance.<sup>574</sup> One of the three victims wished to press charges.<sup>575</sup> Loyola was summoned for battery.<sup>576</sup> On January 19, Loyola started a fire in front of an abandoned business and was summoned for improper handling of a fire.<sup>577</sup> The next day, Loyola was at a 7-Eleven gas station screaming, kicking doors, and refusing to leave the property.<sup>578</sup> She was booked for criminal trespass and disorderly conduct.<sup>579</sup>

567. Criminal Complaint, *State v. Devolk*, T-4-CR-2020-005562 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 1, 2020).

568. Criminal Complaint, *State v. Devolk*, T-4-CR-2020-005562 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 1, 2020).

569. Criminal Complaint, *State v. Devolk*, T-4-CR-2020-005562 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 1, 2020).

570. Citation, *State v. Devolk*, T-4-CR-2020-000380 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 14, 2020); Criminal Complaint, *State v. Devolk*, T-4-CR-2020-003041 (N.M. Bernalillo Cnty. Metro. Ct., May 15, 2020); Citation, *Devolk* 6085, *supra* note 77; Criminal Complaint, *State v. Devolk*, T-4-CR-2020-007080 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 23, 2020).

571. Criminal Complaint, *State v. Devolk*, T-4-CR-2020-004044 (N.M. Bernalillo Cnty. Metro. Ct., July 14, 2020); Criminal Complaint, *State v. Devolk*, T-4-CR-2020-006509 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 23, 2020); Citation, *State v. Devolk*, T-4-CR-2020-007050 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 22, 2020).

572. This number was calculated from the number of booking IDs reported in Gabriel’s 2020 case files.

573. Criminal Complaint, *State v. Volpert*, T-4-CR-2020-907 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 4, 2020).

574. *Id.*

575. *Id.*

576. *Id.*

577. Citation, *State v. Volpert*, T-4-CR-2020-688 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 27, 2020).

578. Criminal Complaint, *State v. Volpert*, T-4-CR-2020-471 (N.M. Bernalillo Cnty. Metro. Ct. Jan. 20, 2020).

579. Criminal Complaint, *State v. Volpert*, T-4-CR-2020-471 (N.M. Bernalillo Cnty. Metro. Ct. Jan. 20, 2020).

On January 25, 911 dispatchers sent officers to a laundromat.<sup>580</sup> When they arrived, they drew their tasers to the low ready position because they had heard Loyola was “armed with a stick.”<sup>581</sup> Loyola was outside the laundromat, yelling at officers and customers.<sup>582</sup> One officer who knew Loyola noted that she had been diagnosed with bipolar disorder and schizophrenia.<sup>583</sup> A laundromat employee reported that Loyola had been loitering outside all morning, yelling at customers, young and old, and at one point was swinging a railroad spike.<sup>584</sup> After being cuffed and placed in the backseat of a patrol car, Loyola called officers “niggers” and threatened to fight them if they touched her.<sup>585</sup> Loyola was transported to Kaseman Hospital for a mental health evaluation and was summoned for disorderly conduct and criminal trespass.<sup>586</sup>

On February 4, Loyola received a citation for littering make-up, trash, and other miscellaneous items on the property of a downtown business.<sup>587</sup> Later that same day, she went to a Sonic restaurant, demanded employees give her candy, and when they did not, removed a chain from around her neck and swung it at a faucet on the building, breaking it.<sup>588</sup> When an employee attempted to shut off the water, Loyola approached him with the chain in her hand, demanded candy, and removed his ID from his pocket.<sup>589</sup> Loyola was booked for aggravated assault with a deadly weapon and criminal damage to property.<sup>590</sup>

On February 13, dispatch sent officers to a northeast intersection in response to reports that Loyola “was rolling around in lanes of traffic.”<sup>591</sup> When officers arrived, they observed Loyola “hitting vehicles with her body.”<sup>592</sup> In addition, Loyola had a cut on her left index finger, which was actively bleeding.<sup>593</sup> At one point, she approached an officer and “threw her blood at him.”<sup>594</sup> Officers used force to take Loyola into custody, placing her in shackles and other restraints.<sup>595</sup> Loyola resisted her arrest by kicking and spitting.<sup>596</sup> Loyola was booked with two counts of battery on a peace officer, assault on a peace officer, and resisting arrest.<sup>597</sup>

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580. Criminal Complaint, *State v. Volpert*, T-4-CR-2020-946 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 5, 2020).

581. *Id.*

582. *Id.*

583. *Id.*

584. *Id.*

585. *Id.*

586. *Id.*

587. Citation, *State v. Volpert*, T-4-CR-2020-1144 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 13, 2020).

588. Criminal Complaint, *State v. Volpert*, T-4-FR-2020-626 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 5, 2020).

589. *Id.*

590. *Id.*

591. Criminal Complaint, *State v. Volpert*, T-4-FR-2020-828 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 14, 2020).

592. *Id.*

593. *Id.*

594. *Id.*

595. *Id.*

596. *Id.*

597. *Id.*

Two days later, the State filed an expedited motion in district court to detain Loyola pretrial.<sup>598</sup> In the motion, the prosecutor argued that,

There are no conditions of release that will keep the community safe. . . . An individual that attacks numerous uniformed, armed law enforcement officers would have no regard for the safety of the average citizen. Further, this is the defendant's seventh arrest in the last three weeks, including an arrest for aggravated assault (deadly weapon) just nine days ago. As she was out on conditions of release in these cases when she committed this crime, she has shown that she will not abide by court orders and will very likely reoffend within days of release.<sup>599</sup>

The court granted the State's motion, and Loyola remained jailed at the MDC until June 30.<sup>600</sup>

On September 5, officers were transporting Loyola to Kaseman Hospital "in reference to a suicide attempt by walking into traffic and disobeying officer's commands to get out of the traffic."<sup>601</sup> As the officer escorting Loyola attempted to sit her down in a waiting room, she began kicking, striking the officer in the arm and leg. Loyola was booked for battery upon a peace officer.<sup>602</sup>

On November 10, Loyola walked into a cigar shop, purchased a few items, and began yelling at customers that "she had started her menstrual cycle and needed tampons."<sup>603</sup> The store owner gave Loyola some tampons and phoned his daughter, Dawn, for help.<sup>604</sup> When Dawn arrived, Loyola was sitting outside.<sup>605</sup> Dawn asked Loyola her name and asked her to sit up.<sup>606</sup> Loyola responded by yelling profanities and getting in her face.<sup>607</sup> Dawn felt "extremely uncomfortable" and called the police.<sup>608</sup> Officers attempted to calm Loyola down, but when they asked for her name, she became enraged.<sup>609</sup> Consequently, officers arrested Loyola, escorted her to a patrol car, and transported her to a County Sheriff's substation.<sup>610</sup> While there, Loyola kicked an officer in the shin. Loyola was booked for disorderly conduct and battery on a peace officer.<sup>611</sup>

598. State's Expedited Motion for Pretrial Detention, at 2, *State v. Volpert*, T-4-FR-2020-828.

599. *Id.*

600. Order Granting State's Motion for Pretrial Detention, *State v. Volpert*, T-4-FR-2020-828 (N.M. 2d Dist. Ct., Feb. 15, 2020); Loyola Volpert's booking history at Metropolitan Detention Center was obtained through a public record request to Bernalillo County, New Mexico, and is on file with the author.

601. Criminal Complaint, *State v. Volpert*, T-4-FR-2020-4203 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 5, 2020).

602. *Id.*

603. Criminal Complaint, *State v. Volpert*, T-4-FR-2020-5326 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 10, 2020).

604. *Id.*

605. *Id.*

606. *Id.*

607. *Id.*

608. *Id.*

609. *Id.*

610. *Id.*

611. *Id.*

On December 2, Loyola was at a Walgreens using a lipstick she had not paid for, writing on a store display with the lipstick, and causing damage to a stuffed animal. When asked to leave, Loyola became aggressive and threatened to kill the store manager but eventually left. Loyola returned an hour later and was yelling at customers, ripping magazines, eating unpurchased candy, and threatening the store manager with a shovel. In total, Loyola damaged or stole \$380 worth of merchandise. Loyola was booked for shoplifting, criminal damage to property, disorderly conduct, criminal trespass, and assault.<sup>612</sup>

In total, Loyola spent nearly six months at the MDC in 2020 as a result of eight bookings connected to the cases above.<sup>613</sup>

*viii. Jeffrey*

Jeffrey was arrested eleven times in 2020. Virtually all the complaints filed against Jeffrey involved crimes committed at the Amberly Suites Hotel. On February 15, an officer observed Jeffrey and Nichole walking along the north side of Interstate 40.<sup>614</sup> The officer cuffed Jeffrey because he could not recite his social security number.<sup>615</sup> The officer asked Jeffrey if he had anything in his pockets that could injure, stick, or poke him.<sup>616</sup> Jeffrey stated he had a pocketknife.<sup>617</sup> The officer then patted Jeffrey down.<sup>618</sup> Due to Jeffrey's pockets being filled with "very sharp items," the officer emptied all of Jeffrey's pockets and found "one metal pipe, one glass pipe, one silver 380 auto round, one gold 380 auto round, one 12-gauge bean bag round, and multiple vehicle bump keys."<sup>619</sup> Jeffrey was summoned for possession of drug paraphernalia and unlawfully walking along a roadway.<sup>620</sup>

On March 9, Jeffrey would not leave his father's room at the Amberly Suites Hotel.<sup>621</sup> A private security officer called the police when he failed to get Jeffrey to leave.<sup>622</sup> When officers arrived, Jeffrey wrongly asserted he "owned the hotel room."<sup>623</sup> An officer cuffed Jeffrey, patted him down, and found methamphetamine in his pocket.<sup>624</sup> Jeffrey was booked for possession of a controlled substance, public nuisance, and criminal trespass.<sup>625</sup>

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612. Criminal Complaint, *State v. Volpert*, T-4-CR-2020-6680 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 2, 2020).

613. Loyola Volpert's booking history at Metropolitan Detention Center was obtained through a public record request to Bernalillo County, New Mexico, and is on file with the author.

614. Criminal Complaint, *State v. Wenze*, T-4-CR-2020-001479 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 25, 2020).

615. *Id.*

616. *Id.*

617. *Id.*

618. *Id.*

619. *Id.*

620. *Id.*

621. Criminal Complaint, *State v. Wenze*, T-4-FR-2020-1289 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 9, 2020).

622. *Id.*

623. *Id.*

624. *Id.*

625. *Id.*

On April 11, an Amberly Suites Hotel employee flagged down a patrol officer and reported that Jeffrey was inside one of their rooms without their consent.<sup>626</sup> Jeffrey explained that he knew he was not supposed to be at the hotel, but he had no other place to go.<sup>627</sup> Jeffrey was ordered not to return to the hotel.<sup>628</sup> During a two-week period spanning late April to early May, Jeffrey repeatedly returned to his parents' room at the hotel and received multiple summons.<sup>629</sup>

On April 29, the Amberly Suites Hotel owner observed Jeffrey walking around the hotel with a "large black pole."<sup>630</sup> The owner confronted Jeffrey and took the pole from him.<sup>631</sup> Jeffrey then pulled a screwdriver from his pocket and walked to his father's "apartment."<sup>632</sup> When officers confronted Jeffrey and notified him that he had to leave the property, Jeffrey paced, mumbled, packed his bags, and vacated his father's room. Jeffrey was summoned for criminal trespass.<sup>633</sup>

On July 14, Jeffrey approached a man inside a parked vehicle at Los Altos Park and "pushed the door, causing it to dent inward."<sup>634</sup> When the man stepped outside his vehicle, Jeffrey "applied force to his back with a knife causing a "small cut."<sup>635</sup> Jeffrey was cuffed and patted down for weapons.<sup>636</sup> The officer found two knives and two packages of marijuana.<sup>637</sup> Jeffrey was booked for aggravated battery with a deadly weapon, criminal damage to property, and possession of a controlled substance.<sup>638</sup>

On November 9, Jeffrey returned to the Amberly Suites Hotel. Jeffrey's mother-in-law reported that he "was agitated and refused to leave."<sup>639</sup> When officers attempted to handcuff Jeffrey, he pulled his arms and attempted to walk away.<sup>640</sup> Jeffrey was booked for resisting arrest.<sup>641</sup>

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626. Criminal Complaint, *State v. Wenzel*, T-4-CR-2020-002845 (N.M. Bernalillo Cnty. Metro. Ct., May 7, 2020).

627. *Id.*

628. *Id.*

629. Criminal Complaint, *State v. Wenzel*, T-4-CR-2020-003136 (N.M. Bernalillo Cnty. Metro. Ct., May 21, 2020) [hereinafter Criminal Complaint, *Wenzel* 3136]; Criminal Complaint, *State v. Wenzel*, T-4-CR-2020-002668 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 29, 2020) [hereinafter Criminal Complaint, *Wenzel* 2668]; Criminal Complaint, *State v. Wenzel*, T-4-CR-2020-003059 (N.M. Bernalillo Cnty. Metro. Ct., May 15, 2020) [hereinafter Criminal Complaint, *Wenzel* 3059].

630. Criminal Complaint, *State v. Wenzel*, T-4-CR-2020-003137 (N.M. Bernalillo Cnty. Metro. Ct., May 21, 2020).

631. *Id.*

632. *Id.*

633. *Id.*

634. Criminal Complaint, *State v. Wenzel*, T-4-FR-2020-3202 (N.M. Bernalillo Cnty. Metro. Ct., July 14, 2020).

635. *Id.*

636. *Id.*

637. *Id.*

638. *Id.*

639. Criminal Complaint, *State v. Wenzel*, T-4-CR-2020-6226 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 9, 2020).

640. *Id.*

641. *Id.*

Finally, on December 8, officers were dispatched to the Amberly Suites Hotel in reference to property damage.<sup>642</sup> Jeffrey had broken into a hotel room and “damaged the television, ripped out the smoke detector, wrote graffiti on the wall, and damaged the bathroom sink.”<sup>643</sup> Jeffrey was booked for burglary, criminal damage to property, and criminal trespass.<sup>644</sup>

In total, Jeffrey was booked eight times in 2020 and housed at the MDC for 45 days.<sup>645</sup>

*ix. Clayton*

Clayton was arrested sixteen times in 2020. On February 16, police were called concerning Clayton yelling outside a northeast hotel.<sup>646</sup> When an officer arrived, he saw Clayton preparing to cross a street and warned him not to jaywalk.<sup>647</sup> Clayton disregarded the officer’s warning and “crossed the street against no-walk signal and green light.”<sup>648</sup> Clayton was summoned for disorderly conduct and jaywalking.<sup>649</sup>

Twelve hours later, an officer working chief’s overtime at Walmart heard a “door greeter” yelling and pointing at Clayton as he ran out the door.<sup>650</sup> Clayton had smashed a display case and stolen a phone.<sup>651</sup> The officer drew his taser and ordered Clayton to place his hands on a vending machine.<sup>652</sup> Clayton complied, but he then refused to be handcuffed, slipped out of his shirt, which the officer had hold of, and ran into the parking lot.<sup>653</sup> With the assistance of another officer, Clayton was seized and handcuffed in the parking lot.<sup>654</sup> Clayton was booked for shoplifting, criminal damage, and resisting arrest.<sup>655</sup>

On March 3, Clayton entered a Walgreens wearing a hooded sweatshirt, black face mask, and sunglasses.<sup>656</sup> An employee asked him to remove his mask.<sup>657</sup> Clayton refused.<sup>658</sup> When officers arrived, Clayton hid behind some shelves and

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642. Criminal Complaint, *State v. Wenze*, T-4-FR-2020-5746 (N.M. Bernalillo Cnty. Metro. Ct., Dec. 8, 2020).

643. *Id.*

644. *Id.*

645. Jeffrey Wenze’s booking history at Metropolitan Detention Center was obtained through a public record request to Bernalillo County, New Mexico, and is on file with the author.

646. Citation, *State v. Eaton*, T-4-CR-2020-1342 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 19, 2020).

647. *Id.*

648. *Id.*

649. *Id.*

650. Criminal Complaint, *State v. Eaton*, T-4-CR-2020-1167 (N.M. Bernalillo Cnty. Metro. Ct., Feb. 16, 2020).

651. *Id.*

652. *Id.*

653. *Id.*

654. *Id.*

655. *Id.*

656. Criminal Complaint, *State v. Eaton*, T-4-CR-2020-1682 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 3, 2020).

657. *Id.*

658. *Id.*

attempted to remove items he had stolen from his pockets.<sup>659</sup> Officers ordered Clayton to “stop going through his pockets” and seized him.<sup>660</sup> As they escorted him out of the Walgreens, he began yelling and causing a scene.<sup>661</sup> A search of Clayton incident to arrest turned up a syringe.<sup>662</sup> Clayton was booked for shoplifting, disorderly conduct, and possession of paraphernalia.<sup>663</sup>

On April 5, Clayton exposed his genitals to customers at a McDonald’s.<sup>664</sup> Later that same day, Clayton stole merchandise from a Dollar store.<sup>665</sup> When officers caught up to Clayton, they discovered that there was an outstanding warrant for his arrest, searched him, and found a glass pipe and two syringes in his right pant pocket.<sup>666</sup> Clayton was summoned for disorderly conduct and possession of drug paraphernalia.<sup>667</sup>

On May 1, Clayton was loitering around Rudy’s and a Blake’s Lotaburger, stole a cup from Blake’s, and exposed his genitals to Rudy’s customers.<sup>668</sup> Officers caught up with Clayton inside the Walgreens across the street, where he was concealing bottles of liquor.<sup>669</sup> Officers informed Clayton that if he agreed to sign criminal trespass notifications, he would not be arrested.<sup>670</sup> Clayton signed the notifications and left the Walgreens.<sup>671</sup> Less than two hours later, Clayton returned to Rudy’s, harassed some customers, and threatened to kill an employee before finally leaving the area.<sup>672</sup> Clayton was summoned for assault and criminal trespass.<sup>673</sup>

Between May 8 and May 15, Clayton committed a series of shopliftings at a Walgreens store.<sup>674</sup> Clayton stole hygiene products, sunscreen, chocolate milk, breakfast cereal, and more than a dozen bottles of liquor.<sup>675</sup> Clayton was summoned for ten counts of criminal trespass and nine counts of shoplifting.<sup>676</sup>

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659. *Id.*

660. *Id.*

661. *Id.*

662. *Id.*

663. *Id.*

664. Criminal Complaint, *State v. Eaton*, T-4-CR-2020-2595 (N.M. Bernalillo Cnty. Metro. Ct., Apr. 21, 2020).

665. *Id.*

666. *Id.*

667. *Id.*

668. Criminal Complaint, *State v. Eaton*, T-4-CR-2020-2839 (N.M. Bernalillo Cnty. Metro. Ct., May 7, 2020).

669. *Id.*

670. *Id.*

671. *Id.*

672. *Id.*

673. *Id.*

674. Criminal Complaint, *State v. Eaton*, T-4-CR-2020-3344 (N.M. Bernalillo Cnty. Metro. Ct., June 2, 2020).

675. *Id.*

676. *Id.*

On June 10, a patrol officer observed Clayton trespassing on Albuquerque Metropolitan Arroyo Flood Control property.<sup>677</sup> Clayton possessed a bottle cap containing heroin and was booked for possession of a controlled substance.<sup>678</sup> A week later, Clayton was observed throwing trash into the street in front of a Sonic restaurant and summoned for littering.<sup>679</sup>

On June 29, Clayton, once again, returned to Walgreens and was immediately recognized.<sup>680</sup> Officers observed Clayton in the cosmetics aisle behaving erratically and believed that he was possibly armed.<sup>681</sup> Given Clayton's "extensive history of similar incidents" at the same store, officers arrested him.<sup>682</sup> When searched, officers found a heroin-loaded syringe inside Clayton's pants.<sup>683</sup> Clayton was booked for shoplifting, criminal trespass, and possession of a controlled substance.<sup>684</sup> Clayton was summoned for shoplifting from the same Walgreens two additional times in October.<sup>685</sup> On October 31, Clayton stole two cans of soda from a Circle K. Afterward, he proceeded to cause "disturbances at several businesses up and down the Menaul corridor."<sup>686</sup> When officers caught up with him, they noticed he had a "large laceration" on the back of his neck.<sup>687</sup> Consequently, Clayton was transported to the hospital before being summoned for shoplifting.<sup>688</sup>

Finally, on November 2, the manager of an Auto Zone confronted Clayton for attempting to steal LED lights.<sup>689</sup> Clayton "pulled a large 'military-style' knife from his waistband, held it down at his side and said, 'don't touch me or I'll mess you up.'"<sup>690</sup> As the manager backed away, Clayton put away the knife and left with the LED lights.<sup>691</sup> Clayton was seized at a nearby gas station and notified that he had been arrested for armed robbery and aggravated assault with a deadly weapon.<sup>692</sup> Clayton began to cry and reported that his probation would be revoked.<sup>693</sup>

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677. Criminal Complaint, *State v. Eaton*, T-4-FR-2020-2691 (N.M. Bernalillo Cnty. Metro. Ct., June 10, 2020).

678. *Id.*

679. Citation, *State v. Eaton*, T-4-CR-2020-3662 (N.M. Bernalillo Cnty. Metro. Ct., June 22, 2020).

680. Criminal Complaint, *State v. Eaton*, T-4-FR-2020-2988 (N.M. Bernalillo Cnty. Metro. Ct., June 29, 2020).

681. *Id.*

682. *Id.*

683. *Id.*

684. *Id.*

685. Criminal Complaint, *State v. Eaton*, T-4-CR-2020-6372 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 13, 2020); Criminal Complaint, *State v. Eaton*, T-4-CR-2020-6476 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 20, 2020).

686. Criminal Complaint, *Eaton* 6328, *supra* note 76.

687. *Id.*

688. *Id.*

689. Criminal Complaint, *State v. Eaton*, T-4-FR-2020-5191 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 2, 2020).

690. *Id.*

691. *Id.*

692. *Id.*

693. *Id.*



As a result of the charges filed against him in 2020, Clayton spent nearly fourteen months at the MDC in 2020 and 2021.<sup>694</sup>

x. *Anthony*

Anthony was arrested sixteen times in 2020. Anthony has been “a person of interest” within the arson division for several years.<sup>695</sup> Anthony is considered a “serial arsonist” and a “danger to the community.”<sup>696</sup> On January 2, a homeowner reported that he noticed a fire in his garage.<sup>697</sup> As he went to investigate it, he encountered a 50-year-old Black man and was attacked.<sup>698</sup> Officers located Anthony a few blocks away and booked him for battery, public nuisance, and arson.<sup>699</sup>

On January 11, Anthony was “causing a disturbance with security guards” at the Albuquerque Convention Center.<sup>700</sup> Anthony was booked for criminal trespass, given that he had already been issued multiple trespass notifications from the convention center.<sup>701</sup> A few days later, Anthony broke a glass door on the second floor of a downtown building under construction.<sup>702</sup> Anthony was booked for felony criminal damage to property.<sup>703</sup> On January 27, Anthony started a fire, put it out, then broke two double-pane windows at a commercial building.<sup>704</sup> The caller reported knowing Anthony from prior encounters.<sup>705</sup> Anthony was booked for felony criminal damage to property.<sup>706</sup>

Between March and July, Anthony was arrested for starting three fires at Southwest Women’s Options. The staff and investigating officers knew Anthony from prior, similar occurrences. In two cases, no damage was reported, and Anthony was only summoned for criminal trespass.<sup>707</sup> In the third case, Anthony’s fire

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694. Sentencing Order, *Eaton*, T-4-CR-2020-2839 (38 days); Amended Judgment and Sentence at 4, *Eaton*, T-4-FR-2020-2691 (24 days); Judgment/Habitual at 3, *State v. Eaton*, D-202-CR-2020-02317 (N.M. 2<sup>nd</sup> Judicial Dist., Apr. 27, 2021) (1 year).

695. Criminal Complaint, at 1, *State v. Tolbert*, T-4-FR-2020-5442 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 18, 2020) [hereinafter Criminal Complaint, *Tolbert* 5442].

696. *Id.*

697. Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-16 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 2, 2020).

698. *Id.*

699. *Id.*

700. Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-223 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 11, 2020)

701. *Id.*

702. Criminal Complaint, *State v. Tolbert*, T-4-FR-2020-232 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 15, 2020).

703. *Id.*

704. Criminal Complaint, *State v. Tolbert*, T-4-FR-2020-457 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 27, 2020).

705. *Id.*

706. *Id.*

707. Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-1814 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 6, 2020); Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-3328 (N.M. Bernalillo Cnty. Metro. Ct., June 2, 2020).

damaged the building's stucco, and he was summoned for criminal damage to property and misdemeanor arson.<sup>708</sup>

On March 11, Anthony started a fire along a stairwell at Albuquerque Charter Academy.<sup>709</sup> Anthony had thrown shoes, clothes, and a hammer into the fire.<sup>710</sup> Anthony was booked for felony arson, improper handling of a fire, and criminal trespass.<sup>711</sup>

On April 28, a downtown business owner called the police and reported that his son was detaining Anthony at gunpoint for trespassing on their property.<sup>712</sup> The caller added that "they had been having problems with trespassers littering, leaving drug paraphernalia, damaging property, and setting fires" and that they suspected Anthony was on drugs.<sup>713</sup> The caller's son reported prior encounters with Anthony in which he was agitated and hostile and that today, Anthony was threatening.<sup>714</sup> Anthony was summoned for criminal trespass.<sup>715</sup>

On June 20, Anthony broke several windows at a downtown law office and was summoned for the damage.<sup>716</sup> A month later, Anthony walked onto the front porch of a downtown home, spilled a "small bottle of acrylic silver paint," and was summoned for trespass and property damage.<sup>717</sup>

During September and October, Anthony was arrested twice at Zia Glass.<sup>718</sup> On September 17, Anthony broke the front glass door and was booked for felony criminal damage.<sup>719</sup> When he returned two weeks later, he climbed over a locked gate and started a fire on a concrete floor under a covered carport.<sup>720</sup> Officers commanded Anthony to "step out with his hands up and empty." Anthony complied.<sup>721</sup> The fire had melted some plastic and other small items.<sup>722</sup> Anthony was booked for improper handling of a fire and criminal trespass.<sup>723</sup>

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708. Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-4337 (N.M. Bernalillo Cnty. Metro. Ct., July 30, 2020).

709. Criminal Complaint, *State v. Tolbert*, T-4-FR-2020-1347 (N.M. Bernalillo Cnty. Metro. Ct., Mar. 12, 2020).

710. *Id.*

711. *Id.*

712. Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-2929 (N.M. Bernalillo Cnty. Metro. Ct., May 12, 2020).

713. *Id.*

714. *Id.*

715. *Id.*

716. Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-3837 (N.M. Bernalillo Cnty. Metro. Ct., July 2, 2020).

717. Citation, *State v. Tolbert*, T-4-CR-2020-4290 (N.M. Bernalillo Cnty. Metro. Ct., July 28, 2020).

718. Criminal Complaint, *State v. Tolbert*, T-4-FR-2020-4429 (N.M. Bernalillo Cnty. Metro. Ct., Sept. 17, 2020) [hereinafter Criminal Complaint, *Tolbert* 4429]; Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-5590 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 2, 2020) [hereinafter Criminal Complaint, *Tolbert* 5590].

719. Criminal Complaint, *Tolbert* 4429, *supra* note 718.

720. Criminal Complaint, *Tolbert* 5590, *supra* note 718.

721. *Id.*

722. *Id.*

723. *Id.*

On October 5, Anthony entered a fenced area of a business and started a small fire.<sup>724</sup> When officers found Anthony a half block away, he was holding a bullet.<sup>725</sup> An officer then phoned his Sergeant and reported that he believed Anthony “was a threat to himself and others due to the fact he was starting fires and had a live round near or inside a fire.”<sup>726</sup> The officer recommended Anthony be taken for a psychiatric evaluation.<sup>727</sup> The Sergeant agreed.<sup>728</sup> Anthony was transported to Lovelace Hospital and summoned for arson.<sup>729</sup>

On November 8, Anthony broke into a downtown law office.<sup>730</sup> When officers arrived, they established a perimeter around the business and waited for the K-9 unit to arrive.<sup>731</sup> Before the K-9 unit arrived, Anthony came out of the business.<sup>732</sup> Anthony’s “trousers were very loose, and he was not wearing any underwear. As he walked outside, his trousers were down, exposing his genitals and buttocks to public view.”<sup>733</sup> Anthony explained to officers that he had entered the property to change his clothes.<sup>734</sup> Anthony was booked for breaking and entering and indecent exposure.<sup>735</sup>

Finally, on November 13, a downtown business owner requested that Albuquerque Fire and Rescue investigate a vehicle fire on his property.<sup>736</sup> Surveillance video showed that Anthony had trespassed onto private property by jumping a six-foot wall.<sup>737</sup> Anthony then made his way to a carport, placed trash debris under the front of a car, started a fire, and left the property.<sup>738</sup> Anthony was later arrested and booked for felony arson.<sup>739</sup>

In total, Anthony spent nine and a half months at the MDC in 2020 and 2021 as a result of twelve bookings connected to the cases above.<sup>740</sup> Ultimately, all of the criminal complaints filed against Anthony in 2020 were dismissed due to Anthony being diagnosed incompetent.<sup>741</sup>

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724. Criminal Complaint, *State v. Tolbert*, T-4-CR-2020-6007 (N.M. Bernalillo Cnty. Metro. Ct., Oct. 23, 2020).

725. *Id.*

726. *Id.*

727. *Id.*

728. *Id.*

729. *Id.*

730. Criminal Complaint, *State v. Tolbert*, T-4-FR-2020-5283 (N.M. Bernalillo Cnty. Metro. Ct., Nov. 8, 2020).

731. *Id.*

732. *Id.*

733. *Id.*

734. *Id.*

735. *Id.*

736. Criminal Complaint, *Tolbert* 5442, *supra* note 695.

737. *Id.*

738. *Id.*

739. *Id.*

740. Anthony Tolbert’s booking history at Metropolitan Detention Center was obtained through a public record request to Bernalillo County, New Mexico, and is on file with the author.

741. *See, e.g.*, Register of Actions, *State v. Tolbert*, D-202-CR-2020-2384 (N.M. Bernalillo Cnty. Metro. Ct., Jan. 7, 2021); Register of Actions, *State v. Tolbert*, T-4-CR-2020-0016 (N.M. Bernalillo Cnty.

## CONCLUSION

On June 15, 2020, Albuquerque Mayor Tim Keller announced that in response to “nationwide calls to move resources away from armed police response,” Albuquerque would create a new Community Safety Department (“ACS”).<sup>742</sup> Keller explained,

It’s time we stop asking officers to do everything, and time we get people the help they need instead of sending armed officers to knock on their door . . . We’re creating a third branch of first responders—alongside our police and fire departments—to deliver a civilian public health approach to public safety. . . . We want to send the right resource to the right call—especially where a social worker or trained professional can connect people with the services they need, instead of simply taking folks to jail or the hospital, which have been the only choices until now.<sup>743</sup>

The approved budget for ACS in fiscal year 2022 was \$7.7 million,<sup>744</sup> and the city has proposed increasing its budget to \$15.5 million in fiscal year 2023.<sup>745</sup> By comparison, the approved budget for APD in fiscal year 2022 was \$222.6 million,<sup>746</sup> and the city has proposed increasing its budget to \$255.4 million in fiscal year 2023, an increase which is twice the total proposed budget for ACS.<sup>747</sup>

Metro. Ct., Feb. 11, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-0223 (N.M. Bernalillo Cty. Metro. Ct., Feb. 11, 2020).

See Register of Actions, *State v. Tolbert*, T-4-CR-2020-1814 (N.M. Bernalillo Cty. Metro. Ct., Mar. 30, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-2929 (N.M. Bernalillo Cty. Metro. Ct., July 2, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-3328 (N.M. Bernalillo Cty. Metro. Ct., June 25, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-3837 (N.M. Bernalillo Cty. Metro. Ct., July 28, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-4290 (N.M. Bernalillo Cty. Metro. Ct., Aug. 31, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-4337 (N.M. Bernalillo Cty. Metro. Ct., Aug. 20, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-5590 (N.M. Bernalillo Cty. Metro. Ct., Oct. 3, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-6007 (N.M. Bernalillo Cty. Metro. Ct., Nov. 06, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-0232 (N.M. Bernalillo Cty. Metro. Ct., Feb. 11, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-0457 (N.M. Bernalillo Cty. Metro. Ct., Feb. 11, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-1347 (N.M. Bernalillo Cty. Metro. Ct., July 2, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-4429 (N.M. Bernalillo Cty. Metro. Ct., Dec. 4, 2020); Register of Actions, *State v. Tolbert*, T-4-CR-2020-5283 (N.M. Bernalillo Cty. Metro. Ct., Aug. 23, 2021).

742. City of Albuquerque, *Mayor Tim Keller to Refocus Millions in Public Safety Resources with First-of-Its-Kind Civilian Response Department* (June 15, 2020), <https://www.cabq.gov/mayor/news/mayor-tim-keller-to-refocus-millions-in-public-safety-resources-with-first-of-its-kind-civilian-response-department> [https://perma.cc/87PQ-XE6H].

743. *Id.*

744. City of Albuquerque, *Fiscal Year 2022 Approved Budget*, at 152, <https://www.cabq.gov/dfa/documents/fy22-approved-budget-numbered-w-hyperlinks-final.pdf> [https://perma.cc/7QHT-DEA9].

745. City of Albuquerque, *Proposed Budget Fiscal Year 2023*, at 87, <https://www.cabq.gov/dfa/documents/fy23-proposed-final-web-version.pdf> [https://perma.cc/AXM8-MN6F].

746. *Fiscal Year 2022 Approved Budget*, *supra* note 744, at 227.

747. *Proposed Budget Fiscal Year 2023*, *supra* note 745, at 155.

ACS operates independently from and in collaboration with APD and AFR and consists of the following four teams—mobile crisis team (“MCT”), behavioral health responders (“BHRs”), street outreach and resource responders, and community responders.<sup>748</sup> The team which has the greatest potential to disrupt the seemingly terminal cycle of arrest, warrant, and jail for non-violent “crimes” committed by Albuquerque’s unhoused are the BHRs. They have backgrounds as social workers, counselors, clinicians, and peer-to-peer support, and they respond to requests for assistance “with individuals experiencing issues with mental and behavioral health, inebriation, homelessness, addiction, chronic mental illness as well as other issues that do not require police, fire, or EMS response.”<sup>749</sup>

During the first six months of 2022, ACS received 8,224 calls for service.<sup>750</sup> The BHRs responded to nearly 70% (5,661) of those calls.<sup>751</sup> The majority of “call types” have been “unsheltered individuals.”<sup>752</sup>

The following are a few illustrations of ACS’s work drawn from their monthly informational reports under the heading “ACS win board.”<sup>753</sup>

A family, evicted from their apartment in October, was camping in a public park.<sup>754</sup> The family had an income but needed assistance with deposit money.<sup>755</sup> Rather than citing them for unlawful camping, behavioral health responders worked with APD’s Crisis Outreach and Support Team to arrange assistance with deposit costs and to find an apartment complex that would take the family.<sup>756</sup>

A restaurant owner called 911 to report an unsheltered man refusing to leave his restaurant.<sup>757</sup> The unsheltered man requested to speak with the mobile crisis team.<sup>758</sup> Rather than issue him a citation for criminally trespassing, MCT helped de-escalate the situation with the restaurant owner, gathered the unsheltered man’s belongings, and transported him to a shelter that was serving lunch.<sup>759</sup>

748. Albuquerque Community Safety, *Our Role*, <https://www.cabq.gov/acs/our-role> [<https://perma.cc/V95Z-VBAH>]; Albuquerque Community Safety, *Our Response*, <https://www.cabq.gov/acs/our-response> [<https://perma.cc/WMC5-NF9F>]. The four teams are the mobile crisis team, behavioral health responders, street outreach and resource responders, and community responders. The mobile crisis teams include a uniformed law enforcement officer.

749. Albuquerque Community Safety, *Our Response*, <https://www.cabq.gov/acs/our-response> [<https://perma.cc/P7Q3-Y7Q7>].

750. *See generally* Albuquerque Community Safety, *Transparency*, <https://www.cabq.gov/acs/reports> [<https://perma.cc/2PA9-83UC>].

751. *Id.*

752. *Id.*

753. *Id.*

754. *See* Albuquerque Community Safety: Monthly Informational Report, at 5 (January 2022), <https://www.cabq.gov/acs/documents/acs-monthly-informational-report-january-2022.pdf> [<https://perma.cc/W2KP-QVMH>].

755. *Id.*

756. *Id.*

757. *See* Albuquerque Community Safety: Monthly Informational Report, at 7 (February 2022), <https://www.cabq.gov/acs/documents/acs-monthly-informational-report-february-2022.pdf> [<https://perma.cc/D33E-YNDU>].

758. *Id.*

759. *Id.*

The MCT responded to a call regarding a man in the street with his pants falling down.<sup>760</sup> MCT recognized the man as a well-known, unsheltered individual.<sup>761</sup> Rather than issue him a summons for indecent exposure, MCT bought him a belt, socks, blanket, and duffle bag while an officer took him to get a meal.<sup>762</sup> Afterward, they made sure he was in a safe location.<sup>763</sup>

BHRs responded to an encampment call in an alleyway.<sup>764</sup> They encountered a drug-addicted young woman with her dog.<sup>765</sup> Rather than issue her a summons for obstructing the alleyway and then using the charge as a pretext to pat her down for drugs, the BHRs referred her to Youth Development, Inc. to help get her needed services.<sup>766</sup>

Linking up unhoused people with available services rather than habitually and repeatedly arresting and housing them in the county jail is a step in the right direction but ultimately does not get at the roots of the problems faced by the unhoused. To do that, we must be willing to “demand the impossible”<sup>767</sup>—universal access to adequate food, clothing, shelter, and healthcare, legalization of drugs, an end to capitalism and state violence, and a world without police and jails.

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760. See Albuquerque Community Safety: Monthly Informational Report, at 7 (March 2022), <https://www.cabq.gov/acs/documents/acs-monthly-informational-report-march-2022.pdf> [<https://perma.cc/L7SN-93Z9>].

761. *Id.*

762. *Id.*

763. *Id.*

764. See Albuquerque Community Safety: Monthly Informational Report, at 6 (June 2022), <https://www.cabq.gov/acs/documents/acs-monthly-informational-report-june-2022-condensed.pdf> [<https://perma.cc/BLU4-Y92T>].

765. *Id.*

766. *Id.*

767. See PETER MARSHALL, DEMANDING THE IMPOSSIBLE: A HISTORY OF ANARCHISM (2010); BILL AYERS, DEMAND THE IMPOSSIBLE: A RADICAL MANIFESTO! (2016).